

United States
Circuit Court of Appeals
For the Ninth Circuit.

ROD D. LEGGAT,

Appellant,

vs.

CHARLES D. McLURE,

Appellee.

Transcript of Record.

Upon Appeal from the United States District Court for the
District of Montana.

Filed

APR - 4 1916

F. D. Monckton,
Clerk.

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INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

	Page
Amendment to Bill of Complaint.....	22
Answer	14
Assignment of Errors.....	30
Bill of Complaint.....	2
Bond on Appeal.....	36
Certificate of Clerk, U. S. District Court to Transcript of Record.....	223
Citation on Appeal.....	38
Condensed Statement of Evidence.....	41
Decree	27

EXHIBITS:

Exhibit "A"—Sheriff's Deed Under Ex- ecution	10
Plaintiff's Exhibit "A"—Option, July 1, 1912	44
Plaintiff's Exhibit "B"—Escrow Agree- ment, August 3, 1912.....	46
Plaintiff's Exhibit "C"—Lease, August 2, 1912	50
Plaintiff's Exhibit "D"—Certified Copy of Appraisement	85
Plaintiff's Exhibit "G"—Letter, Rod D. Leggat to C. D. McLure, April 19, 1905.	92

EXHIBITS—Continued:

Plaintiff's Exhibit "H"—Letter, Rod D. Leggat to C. D. McLure, May 2, 1905..	93
Plaintiff's Exhibit "I"—Letter, Rod D. Leggat to C. D. McLure, June 9, 1905..	94
Plaintiff's Exhibit "J"—Letter, Rod D. Leggat to Charles D. McLure, January 15, 1906	96
Plaintiff's Exhibit "K"—Letter, Rod D. Leggat to "Charlie," February 4, 1906	97
Plaintiff's Exhibit "L"—Letter, Rod D. Leggat to C. D. McLure, March 30, 1906	98
Plaintiff's Exhibit "M"—Letter, Rod D. Leggat to "Good Old Friend," July 16, 1906	99
Plaintiff's Exhibit "N"—Letter, Rod D. Leggat to Charles D. McLure, Novem- ber 29, 1906	100
Plaintiff's Exhibit "O"—Letter, Rod D. Legat to C. D. McLure.....	101
Plaintiff's Exhibit "P"—Letter, Rod D. Leggat to "My Dear Friend," June 7, 1907	102
Plaintiff's Exhibit "Q"—Letter, Rod D. Leggat to "Charlie," October 15, 1907	103
Plaintiff's Exhibit "R"—Letter, Rod D. Leggat to C. D. McLure, October 18, 1907	104

Index.

Page

EXHIBITS—Continued:

Plaintiff's Exhibit "S"—Letter, Rod D. Leggat to "Charlie," October 24, 1907.	105
Plaintiff's Exhibit "T"—Letter, Rod D. Leggat to C. D. McLure, May 7, 1908.	107
Plaintiff's Exhibit "U"—Letter, Rod D. Leggat to C. D. McLure, January 29, 1908	108
Plaintiff's Exhibit "V"—Letter, Rod D. Leggat to C. D. McLure, July 6, 1906.	109
Plaintiff's Exhibit "W"—Letter, Rod D. Leggat to "Charlie," January 5, 1906.	112
Plaintiff's Exhibit "X"—Letter, Rod D. Leggat to C. D. McLure, February 22, 1906	113
Plaintiff's Exhibit "Y"—Letter, Rod D. Leggat to "Charlie," March 3, 1908.	115
Plaintiff's Exhibit "Z"—Letter, Rod D. Leggat to C. D. McLure, December 9, 1906	116
Plaintiff's Exhibit 1—Letter, Rod D. Leg- gat to C. D. McLure, August 24, 1909.	118
Plaintiff's Exhibit 2—Letter, Rod D. Leg- gat, to C. D. McLure, July 6, 1909.	120
Plaintiff's Exhibit 3—Letter, Rod D. Leg- gat to C. D. McLure.	121
Plaintiff's Exhibit 4—Letter, Rod D. Leg- gat to "Charlie," January 26, 1907.	123
Plaintiff's Exhibit 5—Letter, Rod D. Leg- gatt to Chas. D. McLure, September 22, 1909	125

	Index.	Page
EXHIBITS—Continued:		
Plaintiff's Exhibit 6—Letter, Rod D. Leggat to "Old Solomon," October 28, 1907		127
Plaintiff's Exhibit 7—Letter, Rod D. Leggat to C. D. McLure, 1/2, 1907.....		127
Plaintiff's Exhibit 8—Letter, Rod D. Leggat to C. D. McLure, 1/28, 1907.....		130
Plaintiff's Exhibit 9—Letter, Rod D. Leggat to C. D. McLure, February 10, 1907		132
Plaintiff's Exhibit 10—Letter, Rod D. Leggat to Charles D. McLure, May 25, 1907		135
Plaintiff's Exhibit 11—Letter, R. D. Leggat to Charles D. McLure, March 25, 1893.		136
Plaintiff's Exhibit 12—Letter, Rod D. Leggat to Chadles D. McLure, April 8, 1893		137
Plaintiff's Exhibit 13—Letter, R. D. Leggat to C. D. McLure, March 8, 1893.....		138
Plaintiff's Exhibit 14—Letter, R. D. Leggat to Chas. D. McLure, February 13, 1892.		139
Plaintiff's Exhibit 15—Letter, Rod D. Leggat to "Charlie," October 6, 1906.....		140
Plaintiff's Exhibit 16—Letter, R. D. Leggat to "Charlie," December 2, 1906.....		141
Plaintiff's Exhibit 17—Letter, Rod D. Leggat to Jesse B. Mellor, August 20, 1909.		143
Plaintiff's Exhibit 18—Letter, Rod D. Leggat to Chas. D. McLure, October 19, 1910		144
Plaintiff's Exhibit 19—Letter, "Rod" to		

Index.	Page
EXHIBITS—Continued:	
“Charlie,” February 5, 1908.....	144
Plaintiff’s Exhibit 20—Lease, July 17, 1912, Between Rod D. Leggat and Charles D. McLure et al.....	152
Plaintiff’s Exhibit 21—Check, Charles D. McLure, August 10, 191—.....	163
Plaintiff’s Exhibit 22—Letter, Rod D. Leg- gat to C. D. McLure, April 11, 1914....	165
Plaintiff’s Exhibit 23—Letter, Rod D. Leg- gat to Charles D. McLure, January 4, 1912	167
Plaintiff’s Exhibit 24—Sheriff’s Deed, June 10, 1914, Sheriff of County of Silver Bow to Rod D. Leggat.....	192
Plaintiff’s Exhibit 25—Sheriff’s Certificate of Sale of Execution, Dated June 6, 1913	196
Defendant’s Exhibit 1—Agreement, August 8, 1912, Thomas Stewart White et ux. and A. B. Wolvin et al.....	58
Memorandum Opinion	25
Names and Addresses of Solicitors of Record..	1
Opinion, Memorandum	25
Order Approving, etc. Statement of Evidence	225
Order Extending Time to Docket Case.....	225
Petition for Appeal and Allowance.....	34
Praeipie for Transcript of Record.....	39
Solicitors of Record, Names and Addresses of..	1
Supplemental Answer	23

Index.	Page
TESTIMONY ON BEHALF OF PLAINTIFF:	
McLURE, CHARLES D.....	74
Cross-examination	177
Redirect Examination	190
McLURE, WILLIAM	70
Cross-examination	72
MURRAY, JAMES E.....	64
SANDERS, L. P.....	41
Cross-examination	48
Redirect Examination.....	63
TESTIMONY ON BEHALF OF DEFENDANT:	
FENLON, THOMAS.....	220
Cross-examination	221
LEGGAT, ROD.....	206
Cross-examination	212
Recalled	221
LYNCH, HUGH	199
Cross-examination	200
Redirect Examination	203
NOONAN, LUKE	204
Cross-examination	205

[1*] **Names and Addresses of Solicitors of Record.**

Messrs. MAURY TEMPLEMAN & DAVIES,
of Butte, Montana,

Messrs. GUNN, RASCH & HALL, of Helena,
Montana,

Solicitors for Plaintiff and Appellee.

Messrs. NOLAN & DONOVAN, of Butte, Mon-
tana,

WILLIAM SCALLON, Esq., of Helena, Mon-
tana,

Solicitors for Defendant and Appellant.

[2] *In the District Court of the United States, in
and for the District of Montana.*

No. 22—IN EQUITY.

CHARLES D. McLURE,

Plaintiff,

vs.

ROD D. LEGGAT,

Defendant.

BE IT REMEMBERED, that on April 7, 1915, the
plaintiff filed his bill of complaint herein in the words
and figures following, to wit:

*Page-number appearing at top of page of original certified Record.

[3] *In the District Court of the United States, in
and for the District of Montana.*

In EQUITY.

CHARLES D. McLURE,

Complainant,

vs.

ROD D. LEGGAT,

Defendant.

Bill of Complaint.

To the Honorable, the Judges of the Above-entitled
Court, and the Court:

Your orator a citizen of the State of Missouri, brings this bill of complaint in equity against the defendant, a citizen of Montana, and for a cause of action where the amount involved is more than three thousand (\$3,000) dollars, and thereupon your orator complaining, alleges:

1. That Charles D. McLure, the complainant, at all times hereinafter mentioned was and now is a citizen of the State of Missouri.

2. That Rod D. Leggat at all times hereinafter mentioned was and now is a citizen of the State of Montana.

3. That the amount involved in this suit in equity, exclusive of interest and costs, is more than the sum of three thousand (\$3,000) dollars, to wit, it is more than [4] the sum of one hundred and forty-eight thousand (\$148,000) dollars.

4. And further your orator alleges: That on the 18th day of April, 1913, your orator was seized as

of his own demesne in fee simple absolute of all of the following described property situate in Silver Bow County in Montana, and in the district aforesaid.

An undivided three-fourths ($\frac{3}{4}$ ths) interest of, in and to the Eastern quartz lode mining claim, Survey No. 1230, and patented;

An undivided three eighths ($\frac{3}{8}$ ths) interest in and to the Ouichita quartz lode mining claim, Survey No. 1229, and patented.

An undivided one-half ($\frac{1}{2}$) interest in the Elvina quartz lode mining claim, Lot No. 258;

And an undivided one-sixth ($\frac{1}{6}$ th) interest in the Bland quartz lode mining claim, Survey No. 1160.

5. Your orator further alleges: That on the 18th day of April, 1913, a certain judgment was rendered and entered by the District Court of the Second Judicial District of the State of Montana, in and for the county of Silver Bow against your orator, and in favor of Ira T. Wight and others, and execution was issued thereon on the 14th day of May, 1913, for the sum of \$964.65 and no greater sum; that the said execution was placed in the hands of the sheriff of Silver Bow County by the plaintiff Ira T. Wight and his coplaintiff therein, and [5] the said sheriff levied upon and seized all of your orator's right, title and interest in the above-described real property, which consists of four separate and distinct parcels of land, and all of the said property was under the said judgment and execution advertised by the sheriff of Silver Bow County for sale to be had on June 6th, 1913.

6. That at all times between the first day of January, 1913, and the present day, the said above-described interests of your orator in the said four patented mining claims at all times was and is now of the reasonable market value and price of one hundred and fifty thousand (\$150,000) dollars and more.

7. That there had existed between your orator and the defendant during a period of thirty years a warm friendship, confidence and mutual trust; that your orator and the defendant had been repeatedly during the said thirty years engaged as copartners in many mining ventures and the operation of many mines, and the buying and selling of mines together as joint owners, tenants in common, and at the time of the sale hereinafter set forth, the defendant was a co-owner in each and all of the said four patented mining claims with your orator, to wit, he owned an undivided interest in the Eastern different from the three-fourths interest of your orator; he owned an undivided interest in the Ouichita different from the [6] three-eighths interest of your orator; he owned an undivided interest in the Bland different from the one-sixth interest of your orator; he owned the other one-half interest in the Elvina beside the one-half owned by your orator.

8. And on the said 6th day of June, 1913, while your orator had great and valuable mining properties, the titles to which were otherwise clear save and except for the said judgment, yet your orator had no cash on hand, and on the said day he requested the defendant to become a purchaser at the

said sale and to hold the title, if any were subsequently obtained by the defendant, as a mortgage to secure the amount that might be bid by the defendant at the said sale in payment and satisfaction of the judgment and execution issued against your orator in the suit of Ira T. Wight and others versus your orator, and the said defendant agreed with your orator that he would bid an amount equal to the judgment as to principal, interest and accruing costs and expenses of sale when the sheriff should offer the said real property above described for sale at the said time, and your orator, with the defendant, pursuant to the said agreement, appeared at the said sale, and the defendant did bid pursuant to his agreement with your orator to hold the said title as security for his bid, the sum of one thousand and four and 15/100 (\$1004.15) dollars, and no greater sum; and thereafter, [7] at many times between the 6th day of June, 1913, and the period of redemption of one year allowed by law and statutes in Montana, your orator was able to redeem the said above-described property, and was willing to do so, and signified his intention and desire to do so to the defendant; that the defendant informed your orator repeatedly that after the period of one year might expire, provided there were no redemption, he would hold any title that might be obtained by reason of the expiration of time merely as a mortgage to secure the repayment from your orator of the sum of one thousand and four and 15/100 (\$1,004.15) dollars, and interest thereon at the rate of eight per cent per annum from the 6th day of June,

1913, until the same should be repaid, and promised and agreed with your orator, before the expiration of the said period of redemption, to wit, June 6, 1914, that if your orator at any time after the said 6th day of June, 1914, would repay to the defendant the sum of one thousand and four and 15/100 (\$1,004.15) dollars, together with interest at the rate of eight per cent per annum, he would reconvey to your orator all of the real property of your orator hereinbefore set forth and described. Your orator relied upon the said promise and agreement, and due to such reliance upon such agreement, and the trust and confidence reposed by your orator in the said defendant, the said trust, nurtured and raised up by thirty years of intimate acquaintance and [8] business dealings, and copartnerships in mining ventures, and in the owning of mining properties, and for no other reason, your orator allowed the period of redemption, to wit, one year from the 6th day of June, 1913, to expire without effecting a redemption of any of the property hereinbefore described.

8-A. That on the 10th day of August, 1912, the plaintiff loaned to the defendant five hundred (\$500) dollars, money of the United States; that until the 6th day of June, 1913, the time of the said sale, no part of the same had ever been repaid by the defendant to the plaintiff, and all of the same was entirely due, owing and unpaid, so that the actual consideration of the said bid and the said sheriff's certificate of sale to the defendant R. D. Leggat was only the sum of five hundred and four and 15/100 (\$504.15)

dollars. The plaintiff waives interest on his said loan of five hundred (\$500) dollars to the defendant from August 10, 1912, to June 6, 1913, for that there was no understanding as to interest, and none was expected.

9. That on the 6th day of April, 1915, your orator offered to repay to the defendant the sum of one thousand and four and $15/100$ (\$1,004.15) dollars, together with interest thereon at the rate of eight per cent per annum from June the 6th day, 1913, and requested and demanded of the defendant that he reconvey to your orator the said three-fourths interest in the Eastern lode claim; the said three-eighths interest in the Ouchita lode claim; the said one-sixth interest in the Bland lode claim; and the said one-half interest in the Elvina lode claim; and your orator was able, ready and willing to pay to the defendant the said sum of money with the interest thereon; that the defendant refused to accept the said money, and the defendant refused to reconvey to your orator any of the said lands herein described or any part thereof.

10. That your orator is now ready, willing and able, and hereby offers to pay to the defendant, the sum of one thousand and four and $15/100$ (\$1,004.15) dollars, and also the interest thereon at the rate of eight per cent per annum from the 6th day of June, 1913, until this day, [9] the 7th day of April, 1915, provided the defendant will reconvey to your orator your orator's property as hereinabove described.

11. That the sheriff of Silver Bow County, at the request of the defendant, on the 11th day of June,

1914, made, executed and delivered to the defendant a deed, a copy of which said deed is hereunto annexed and marked exhibit "A"; that the consideration for the said deed is wholly and grossly inadequate, and in great disparity with the actual value of the property described therein, and the said deed was obtained by reason of the trust reposed in the promise and agreement of the defendant made to your orator to reconvey at any time to your orator the said lands upon payment of the said amount of money; that if the said deed be allowed to stand upon the records of Silver Bow County, Montana, where the same has been recorded, it constitutes a cloud upon the title of the said lands herein described, which should in equity and good conscience be the property of your orator upon the payment of the said sum of money with the interest thereon.

12. That the said property and all of the same, though consisting of four separate and distinct parcels of land, and your orator's interest in any one piece would have brought, had your orator sought bidders, the amount of the said judgment of Ira T. Wight, yet all of the same was sold in one parcel, and so that nothing like their full value could be realized; that there were no bidders [10] present at the said sale but the defendant, and no other persons present but your orator, the defendant, the sheriff or his deputy, and one of the plaintiffs.

13. That your orator is a man very much advanced in years, to wit, of approximately the age of seventy (70) years, and during the last two years has suffered much from failing health and sickness.

WHEREFORE your orator prays that the Court and the Judges thereof issue a subpoena to the defendant compelling him to set forth in the answer—an answer under oath being hereby specifically waived—by what right he claims any of the property hereinbefore described; that he be required upon

	Five
Hundred	(\$504.15)
the payment to him of the said sum of one G. W. S.	
thousand and four and 15/100 (\$1,004.15) G. W. S.	
dollars, and such interest as has grown and	

may grow thereon at the rate of eight per cent per annum from June 6, 1913, to make, execute and deliver a deed to the said interests in lands hereinbefore described; that he be thereafter enjoined from ever asserting any title to any of the same, and that your orator recover his costs against the defendant; and for such other and further relief as to the Court may seem meet and equitable.

MAURY, TEMPLEMAN & DAVIES,
Solicitors for the Complainant.

[11] District of Montana,
County of Silver Bow,—ss.

Lowndes Maury, being first duly sworn on his oath, does say: That he is one of the solicitors for Charles D. McLure, the complainant in the foregoing bill of complaint mentioned; that he makes this verification on behalf of the said Charles D. McLure for the reason that the said Charles D. McLure is now absent from the district of Montana, wherein resides the said affiant; that the foregoing bill of complaint

is true to the best of affiant's knowledge, information and belief.

LOWNDES MAURY.

Subscribed and sworn to before me this 7th day of April, 1915.

[N. S.]

W. D. KYLE,

Notary Public for the State of Montana, Residing at Butte, Montana.

My commission expires May 16, 1917.

[12] [Exhibit "A"—Sheriff's Deed Under Execution.]

THIS INDENTURE, made the 10th day of June, in the year of our Lord, 1914, between Tim Driscoll, sheriff of the county of Silver Bow, State of Montana, the party of the first part, and Rod D. Leggat, of the said county of Silver Bow, of the party of the second part.

Whereas, by virtue of writ of execution issued out of and under the seal of the District Court of the Second Judicial District of the State of Montana, in and for the county of Silver Bow, tested the 14th day of May, A. D. 1913, upon a judgment recovered in the said court, on the 18th day of April, A. D. 1913, in favor of Ira T. Wight et al., and against Chas. D. McLure to the said sheriff directed and delivered, commanding him that, out of personal property of said judgment debtor in his county, he should cause to be made certain moneys in the writ specified, and if sufficient property of the said judgment debtor could not be found, then he should cause the amount of said judgment to be made out of the real prop-

erty belonging to said judgment debtor, on the 6th day of June, A. D. 1913, or at any time afterwards; and whereas, because sufficient personal property of the said judgment debtor could not be found, whereof said sheriff could cause to be made the moneys specified in said writ, the said sheriff did, in obedience to said command, levy on, take, and seize all the [13] right, title, interest and claim which said judgment debtor so had in and to the lands, tenements, real estate, and premises hereinafter particularly set forth and described with the appurtenances, and did on the 6th day of June, A. D. 1914, sell all the right, title, interest and claim of the said judgment debtor in and to the said premises at public auction in front of the courthouse in the city of Butte, in said county of Silver Bow, between the hours of nine in the morning and five in the afternoon of that day, namely, at ten o'clock A. M., after having first given due notice of the time and place of such sale, by publication, according to the law, at which sale all the rights, title, interest and claim of said judgment debtor in and to the said premises were struck off and sold to the said party of the second part for the sum of one thousand and four and 15/100 dollars, legal money of the United States of America, the said party of the second part being the highest bidder, and that being the highest sum bid for the same, whereupon the said sheriff, after receiving from the said purchaser the said sum of money so bid as aforesaid, gave to the said party of the second part, such certificate of said sale as is by the law directed to be given, and a duplicate of such

certificate so duly filed by said sheriff in the office of the recorder of the county of Silver Bow; and whereas, twelve months after said sale had expired, without any redemption [14] of the said premises having been made.

NOW THIS INDENTURE WITNESSES, That the said Tim Driscoll, the sheriff aforesaid, by virtue of said writ, and in pursuance of the said statute in such cases made and provided, for and in consideration of the said sum of money, to him in hand paid as aforesaid by the said party of the second part, receipt whereof is hereby acknowledged, have granted, bargained, sold, conveyed, and confirmed, and by these presents doth grant, bargain, sell, convey and confirm unto the said party of the second part, and of his heirs and assigns, forever, all the right, title, interest and claim which the said judgment debtor Chas. D. McLure, had on the 6th day of June, A. D. 1913, or at any time afterwards, or now has in and to that certain lot, piece or parcel of land, situate, lying and being in the city of Butte, county of Silver Bow, State of Montana, and bounded and described as follows, to wit:

The *Elunia* quartz lode mining claim, situated in Silver Bow County, Montana, Lot No. 258, situated in Section one and two, Township 3 North, Range 8 West in Silver Bow County, Montana, patent for said mining claim being of record in Book A of U. S. patents at page 309.

The Eastern quartz lode mining claim, Survey No. 1230, The Bland quartz lode mining claim, Survey

No. 1160. The Ouichita quartz lode mining claim, Survey No. 1229, all in Silver Bow County, State of Montana.

[15] Together with all and singular, the hereditaments and appurtenances thereto belonging or in anywise appertaining, to have and to hold said premises with the appurtenances, unto the said party of the second part, his heirs and assigns, forever, as fully and absolutely as the said sheriff can, may, or ought to, by virtue of said writ and of the statute in such case made and provided, grant, bargain, sell, convey and confirm the same.

IN WITNESS WHEREOF, the said sheriff, the said party of the first part, has hereunto set his hand and seal the day and year first above written.

TIM DRISCOLL,

Sheriff of the County of Silver Bow.

Signed, sealed and delivered in the presence of

HUGH LYNCH.

ANDREW QUILTY.

[16] State of Montana,
County of Silver Bow,—ss.

On this 11th day of June, 1914, before me, W. P. McCarty, a notary public in and for the State of Montana, personally appeared Tim Driscoll, sheriff of the county of Silver Bow, State of Montana, to me known to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that as such sheriff he executed the same.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my official seal the day and year

in this certificate above written.

W. P. McCARTY,
Notary Public in and for the State of Montana, Re-
siding at Butte, Montana.

My commission expires Nov. 12, 1915.

Filed for record June 11, A. D. 1914, at six min-
utes past four o'clock P. M.

DAVE KEHOE,
County Recorder.
By A. Lavelle,
Deputy.

(Book 113, page 379.)

Filed April 7, 1915. Geo. W. Sproule, Clerk.

[17] Thereafter, on May 15, 1915, defendant filed
his answer herein in the words and figures following,
to wit:

[18] *In the District Court of the United States, in
and for the District of Montana.*

IN EQUITY.

CHARLES D. McLURE,

Plaintiff,

vs.

ROD D. LEGGAT,

Defendant.

Answer.

COMES NOW the defendant and as to the allega-
tions of paragraph one of said bill alleges that he is
without knowledge. Defendant admits the allega-
tions of paragraphs two and three of said bill, ex-

cept the allegation in paragraph three of said bill that the property in controversy is worth \$148,000 and, as to said statement, defendant alleges that the value thereof is more than \$3,000, that the said property is mining property and speculative in its nature and that defendant does not know the value thereof.

Defendant admits the allegations of paragraph four of said bill. Defendant alleges, however, that, as to the allegation that plaintiff was on the 18th day of April, 1913, seized in fee simple absolute of an undivided one-half interest in the Elvina Quartz Lode Mining Claim, Lot No. 258, on the 18th day of April, 1913, long prior thereto and thereafter, up to June 6, 1913, the [19] title to the whole interest in said quartz lode mining claim stood in the name of said plaintiff, but that during all of said times the defendant was the owner of the beneficial interest in an undivided one-half thereof.

Defendant denies that on the 18th day of April, 1913, a judgment was rendered and entered by the District Court of the Second Judicial District of the State of Montana, in and for the county of Silver Bow, against the plaintiff and in favor of Ira T. Wight and others, and that execution was issued thereon from said court on the 14th day of May, 1913, for the sum of \$964.65. Defendant alleges the fact to be that the said judgment for said sum was made, given and entered in the District Court of the First Judicial District of the State of Montana, in and for the county of Lewis and Clark against plaintiff and in favor of Ira T. Wight and others for the sum of

\$964.65. Defendant admits that execution was issued upon the the judgment made, given and entered in the said First Judicial District, and placed in the hands of the sheriff of Silver Bow County by the said Ira T. Wight and his coplaintiff, and admits that the sheriff under and by virtue of said execution seized all of the right, title and interest of the plaintiff in and to the Eastern quartz lode mining claim, Survey No. 1230; Ouichita quartz lode mining claim, Survey No. 1229; the Elvina quartz lode mining claim, Lot No. 258; the Bland quartz lode mining claim, Survey No. 1160; and admits that [20] all of the said property was advertised by the sheriff of said Silver Bow County for sale to be had on June 6th, 1913.

As to the allegations of paragraph six of said bill, defendant alleges that he is without knowledge as to whether or not the reasonable market value of the interests in said four patented mining claims, alleged to be the property of the plaintiff, was at all times between the first day of January, 1913, and April 7, 1915, of the reasonable market value of \$150,000 and more. But defendant alleges that the value thereof is speculative and that the said interests have no reasonable market value.

Defendant denies that during a period of thirty years a warm friendship, confidence and mutual trust existed between plaintiff and defendant. Defendant alleges that no copartnership has existed between plaintiff and defendant for more than twenty-five years last past. Defendant admits that, together with plaintiff, he has been an owner in mining

claims as tenant in common with plaintiff. Defendant denies that on the 6th day of June, 1913, he was a co-owner with plaintiff in the Eastern, Ouichita or Bland mining claims; and, as to the Elvina lode claim, defendant alleges that on the 6th day of June, 1913, the title to said claim stood upon the records of Silver Bow County, Montana, in the name of plaintiff; that defendant was the owner of an undivided one-half of the [21] beneficial interest thereof.

Defendant admits that on the 6th day of June, 1913, the title of plaintiff was clear save and except for the said judgment of Ira T. Wight and another against plaintiff. Defendant alleges the fact to be that, between the 6th day of June, 1913, and the 6th day of June, 1914, to wit, on May 29, 1914, the title of the said plaintiff in and to said mining claims was encumbered by an attachment lien in a suit commenced in the District Court of the Second Judicial District of the State of Montana, in and for Silver Bow County, on June 16, 1913, by James A. Murray against the plaintiff, for the sum of \$2,100 principal with interest thereon from the 2d day of March, 1911, for an attorney's fee of \$300, and for costs of suit; and that the said interests were also encumbered on June 4, 1914, by an attachment lien in a suit in said last-named District Court, wherein the Hennessy Company, a corporation, was plaintiff, and this plaintiff was defendant, for the sum of \$1,462.12, together with interest thereon at the rate of eight per cent per annum from the 30th day of August, 1913, and for costs of suit. As to whether or not, upon

June 6th, 1913, plaintiff had no cash on hand, as he alleges, defendant alleges that he is without knowledge.

Defendant denies that plaintiff requested him to become a purchaser at said execution sale on June 6, 1913, and to hold the title, if any were subsequently obtained [22] by the defendant, as a mortgage to secure the amount that might be bid by the defendant at the said sale in payment and satisfaction of the judgment and execution issued against plaintiff in the suit of Ira T. Wight and another against plaintiff; and defendant denies that he agreed with plaintiff that he would bid an amount equal to the judgment as to principal, interest and accruing costs and expenses of sale, when the sheriff should offer the said real property above described for sale on June 6th, 1914, and denies that he had any agreement to appear at said sale for plaintiff, and denies that he purchased at said sale for the plaintiff, and denies that he agreed to hold the title acquired at said sale by him as a mortgage or for any other purpose in which the said plaintiff had any interest. Defendant alleges the fact to be that he purchased at said sale for his own right and account only. Defendant denies that the plaintiff appeared at said execution sale. Defendant alleges that the said plaintiff was not present at said sale. Defendant denies that he bid the sum of \$1,004.15, or any other sum, at said sale under an agreement with plaintiff to hold the title obtained by said purchase as security for the sum so bid by defendant, or for any other sum.

Defendant denies that at any time between the 6th day of June, 1913, and the period of redemption of one year allowed by law and statutes of Montana, to wit, June [23] 6, 1914, plaintiff signified to defendant his intention and desire to redeem said property. As to whether or not, during the said year of redemption, plaintiff was able to redeem the above-described property, defendant alleges that he is without knowledge. Defendant denies that he informed plaintiff repeatedly, or at all, that, after the period of redemption might expire, provided there was no redemption, he, defendant, would hold any title that might be obtained by reason of the expiration of time merely as a mortgage to secure the redemption of the sum of \$1,004.15, with interest thereon at the rate of eight per cent per annum, from the 6th day of June, 1913, until the same should be repaid.

Defendant denies that he promised and agreed with plaintiff, before the expiration of said period of redemption, to wit, June 6, 1914, or at all, that if plaintiff at any time after the said 6th day of June, 1914, would repay to defendant the sum of \$1,004.15, together with interest at the rate of eight per cent per annum, he would reconvey to plaintiff all of the real property purchased at said sale, or any portion thereof, or at all. Defendant denies that the plaintiff permitted the period of redemption to expire by reason of any promise and agreement or conduct of defendant.

Defendant denies that plaintiff on April 6th, 1915, [24] or at any other time, offered to repay defend-

ant the sum of \$1,004.15, together with interest at the rate of eight per cent per annum from June 6, 1913, or any other sum. Defendant admits that plaintiff requested and demanded of him that he convey to plaintiff the interest in said mining claims set forth and described in paragraph nine of his complaint. As to whether plaintiff was able, ready or willing to pay defendant the said sum of money with interest thereon, defendant alleges that he is without knowledge. Defendant admits that he refused to reconvey to plaintiff any of the lands described in the complaint.

Defendant admits, as alleged in paragraph eleven of said bill, that the sheriff of Silver Bow County, Montana, made, executed and delivered to defendant, on June 11, 1914, a sheriff's deed, a true copy of which is annexed to plaintiff's bill and marked exhibit "A." Defendant denies that the consideration for the said deed is wholly and grossly inadequate, and denies that said deed was obtained by reason of a violation of any trust or promise or agreement made by the defendant to the plaintiff to reconvey, or that the said deed was obtained by defendant by reason of the violation of any other trust, promise or agreement made by defendant to plaintiff. Defendant admits that the sum paid by him upon execution is less than the value of the property obtained at said sale.

[25] As to the allegations of paragraph twelve that, had plaintiff sought bidders, the sale of said interests

would have brought more than the amount of judgment for which the same were sold to defendant, defendant alleges that he is without knowledge. Defendant denies that the plaintiff was present at said sale, admits that one of the plaintiffs, Ira T. Wight, was present, and that several other persons, the exact number of which defendant does not recollect, were present.

As to the allegations of paragraph thirteen, defendant admits that plaintiff is approximately of the age of seventy years, and that during the past two years he has been ill, but the defendant alleges that said illness has not, to the knowledge of defendant, incapacitated plaintiff from transacting business or attending to his own affairs.

WHEREFORE, defendant prays that the plaintiff take nothing by his said action, and that he may have his costs herein expended.

LOUIS P. DONOVAN,
TIMOTHY F. NOLAN,
Solicitors for Defendant.

Service of the foregoing answer admitted and copy thereof received this 15th day of May, 1915.

MAURY, TEMPLEMAN & DAVIES,
Solicitors for Plaintiff.

Filed May 15, 1915. Geo. W. Sproule, Clerk.

[26] Thereafter, on —, 1915, plaintiff filed an amendment to his bill of complaint herein in the words and figures following, to wit:

(This amendment has been inserted in the bill.)

[27] *In the District Court of the United States, in
and for the District of Montana.*

CHARLES D. McLURE,

Plaintiff,

vs.

ROD D. LEGGAT,

Defendant.

Amendment to Bill of Complaint.

“That on the 10th day of August, 1912, the plaintiff loaned to the defendant five hundred (\$500) dollars, money of the United States; that until the 6th day of June, 1913, the time of the said sale, no part of the same had ever been repaid by the defendant to the plaintiff, and all of the same was entirely due, owing and unpaid, so that the actual consideration of the said bid and the said sheriff’s certificate of sale to the defendant R. D. Leggat was only the sum of five hundred and four and 15/100 (\$504.15) dollars. The plaintiff waives interest on his said loan of five hundred (\$500) dollars to the defendant from August 10, 1912, to June 6, 1913, for that there was no understanding as to interest, and none was expected.”

Prayer amended by inserting therein five hundred and four and 15/100 (\$504.15) dollars, instead of one

thousand and four and 15/100 (\$1,004.15) dollars.

MAURY, TEMPLEMAN & DAVIES,

Solicitors for the Plaintiff.

[28] Thereafter, on Dec. 16, 1915, supplemental answer was filed by defendant herein, in the words and figures following, to wit:

[29] *In the District Court of the United States, in
and for the District of Montana.*

CHARLES D. McLURE,

Plaintiff,

vs.

ROD D. LEGGAT,

Defendant.

Supplemental Answer.

COMES NOW the defendant, and for answer to the amendment to the bill, inserted therein as paragraph 8-a, and leave of Court being first had and obtained, says:

Admits that on the 10th day of August, 1912, plaintiff loaned to the defendant five hundred dollars, and alleges the fact to be that at the time of said loan there was due to the defendant from the plaintiff a sum in excess of five hundred dollars, to wit, for money laid out and expended by the defendant for the plaintiff, at the latter's request, the sum of either three hundred and twenty (\$320) dollars or three hundred and thirty (\$330) dollars. That on or about 1906 or 1907, defendant sent to the plaintiff

from Butte, Montana, to St. Louis, Missouri, five hundred (500) shares of the capital stock of a Montana corporation called the Combination Mining & Milling Company, which shares were then of the reasonable value of two hundred and fifty (\$250) dollars; that the same were retained by the plaintiff, and that ever since the said plaintiff has deprived the defendant of the possession thereof, and plaintiff alleges on his information and belief that the same were transferred on the books of the said company by the plaintiff to his own name, and ever since [30] have stood, and now stand, upon the books of said company as the property of plaintiff, and that the defendant has been deprived of the same.

L. P. DONOVAN,

T. F. NOLAN,

WM. SCALLON,

Solicitors for Defendant.

Service of the foregoing supplemental answer admitted and copy thereof received this 15 day of December, 1915.

MAURY, TEMPLEMAN & DAVIES,

Solicitors for Plaintiff.

Filed Dec. 16, 1915. Geo. W. Sproule, Clerk.

[31] Thereafter, on Jan. 22, 1916, the Memo. Decision of the Court was duly filed herein, in the words and figures following, to wit:

[32] [Memorandum Opinion.]

United States District Court, Montana.

CHARLES D. McCLURE,

vs.

ROD D. LEGGAT

Herein, the Court finds:

That all the allegations of the complaint are true; that all the allegations of the answer of the nature of counterclaim are true. And therefrom the Court concludes that plaintiff is entitled to recover of and from the defendant the interest in the mining claims set out in the complaint and claimed by him, and \$500 with legal interest from and after August 10, 1912, and costs; that defendant is entitled to recover of and from the plaintiff \$250 and legal interest for 10 years; \$70 and legal interest for 8 years; \$130 and legal interest for 7 years; \$50 and legal interest for 4 years; \$70 and legal interest for 4 years; \$1,004.15 and legal interest from June 6, 1913, to April 7, 1915. An appropriate decree will be entered. Thirty days for plaintiff to pay and defendant to deed.

(Signed) BOURQUIN, J.

MEMO.

The title to the property was in plaintiff, but he

held $\frac{1}{2}$ of the Elvina in trust for defendant. The property was and is worth above \$100,000. A year previous to the sheriff's sale involved it had been optioned for more than that, and perhaps was subject to the option at the time of the sale. Defendant agreed to bid in the property for the amount of the judgment against plaintiff, less than \$1,000, and hold it until plaintiff redeemed. He did so bid it in. [33] Plaintiff was led to believe, by defendant, that he need not redeem within the time fixed by statute in conventional cases, and he relied thereon and acted accordingly. The statutory time expired, and thereupon defendant claimed the property was his and refused redemption.

Very intimate and confidential relations had existed between the parties for 30 years.

No discussion of legal principles is necessary, further than to say that where the purchaser at sheriff's sale leads the judgment debtor to believe he can redeem after the statutory time runs and thus causes him to fail to redeem before the statute runs, the purchaser waives the time and the debtor can redeem within a reasonable time after the statute runs.

Schrader Case, 161 U. S. 344.

132 N. W. 435.

56 N. E. 786.

62 S. W. 1028.

93 Pac. 110.

The plainest principle of justice dictates the judgment. Equity always interferes to undo the wrong committed, in cases like unto this. Plaintiff is entitled to a reconveyance on reimbursing defendant

for his outlay. No exception was taken to the irregularity of the counterclaims put forward by defendant, so they are allowed. Within 30 days plaintiff will pay the amount found due to defendant, and concurrently therewith defendant will deliver a deed of the property to plaintiff.

(Signed) BOURQUIN, J.

Filed Jan. 22, 1916. Geo. W. Sproule, Clerk.

[34] Thereafter, on Fem. 8, 1916, Decree was duly signed and entered herein, in the words and figures following, to wit:

[35] *In the District Court of the United States, in
and for the District of Montana.*

No. 22—IN EQUITY.

CHARLES D. McLURE,

Complainant,

vs.

ROD D. LEGGAT,

Defendant.

Decree.

This cause came on to be further heard at this term, and was argued by counsel; and thereupon, upon consideration thereof, it was ordered, adjudged and decreed as follows:

“Herein, the Court finds:

That all the allegations of the complaint are true; that all the allegations of the answer of the nature of counterclaim are true. And therefrom the Court concludes that plaintiff is entitled to recover of and

from the defendant the interests in the mining claims set out in the complaint and claimed by him, and \$500 with legal interest from and after August 10, 1912, and costs; that defendant is entitled to recover of and from the plaintiff \$250 and legal interest for 10 years; \$70 and legal interest for 8 years; \$130 and legal interest for 7 years; \$50 and legal interest for 4 years; \$70 and legal interest for 4 years; \$1,004.15 and legal interest from June 6, 1913, to April 7, 1915. An appropriate decree will be entered. Thirty days for plaintiff to pay and defendant to deed.

(Signed) BOURQUIN, J."

[36] WHEREFORE, it is ordered, adjudged and decreed that Charles D. McClure upon payment of the sum of \$1,440 to Rod D. Leggat within thirty days from January 22, 1916, or upon tender of the said amount to his solicitors of record within the said time; and, in case of refusal of acceptance by them, deposit of the same with the clerk of this court for the credit of Rod D. Leggat, is the owner of, and entitled to, the immediate possession of an undivided three-fourths ($\frac{3}{4}$) interest of, in and to the Eastern quartz lode mining claim, Survey No. 1230, patented; an undivided three-eighths ($\frac{3}{8}$) interest in and to the Ouichita quartz lode mining claim, Survey No. 1229, patented; an undivided one-sixth ($\frac{1}{6}$) interest in and to the Bland quartz lode mining claim, Survey No. 1160; an undivided one-half ($\frac{1}{2}$) interest in and to the Elvina quartz lode mining claim, Lot No. 258, all in Summit Valley Mining District, in Silver Bow County, in Montana.

Together with the tenements and appurtenances.

And upon such payment being made, or such tender and deposit being made, it is ordered, adjudged and decreed that Rod D. Leggat within thirty days from the 22d day of January, 1916, make, execute and deliver a good and sufficient deed, containing the words: "grant, bargain and sell unto Charles D. McClure, his heirs [37] and assigns," conveying all of the above-described property to the said Charles D. McClure, and that such deed be delivered to the solicitors of the said McClure, and that the said McClure, will recover his costs, fixed at the sum of one hundred thirty-four and 15/100 dollars, to be ascertained in the manner required by the rules of this court.

WITNESS the hand of the Judge this 8th day of February, 1916.

GEO. M. BOURQUIN,

Judge of the United States District Court, Aforesaid.

Filed and entered Feb. 8, 1916. Geo. W. Sproule, Clerk.

[38] Thereafter, on Feb. 9, 1916, defendant's Assignment of Errors was duly filed herein, in the words and figures following, to wit:

[39] *United States District Court, in and for the District of Montana.*

CHARLES D. McLURE,

Complainant,

vs.

ROD D. LEGGAT,

Defendant.

Assignment of Errors.

COMES NOW the defendant above named, by his solicitors, and says that in the decision of said cause and the decree heretofore entered herein on the 8 day of Feb., 1916, the Court erred in the following particulars:

1. The Court erred in finding that all of the allegations of the complaint are true.

2. The Court erred in finding that, at the time of the execution sale in the case of Ira T. Wight and others against Charles D. McLure, the defendant was a co-owner with the complainant in each and all of the four patented mining claims described in complainant's bill of complaint.

3. The Court erred in finding that, at the time of the execution sale referred to in assignment number 2, the defendant owned an undivided interest in the Eastern quartz lode mining claim different from the three-fourths interest of the complainant.

[40] 4. The Court erred in finding that, at the time of the execution sale referred to in assignment number 2 hereof, the defendant owned an undivided interest in the Ouichita quartz lode mining claim different from the three-eighths interest of the complainant.

5. The Court erred in finding that, at the time of the execution sale referred to in assignment number 2 hereof, the defendant owned an undivided interest in the Bland quartz lode mining claim different from the one-sixth interest of the complainant.

6. The Court erred in finding that, on the day of

the execution sale referred to in assignment number 2, the complainant requested the defendant to become a purchaser at the said sale and to hold the title, if any were subsequently obtained by the defendant, as a mortgage to secure the amount that might be paid by the defendant at the said sale in payment and satisfaction of the judgment and execution issued against the complainant in the suit of Ira T. Wight and others vs. the complainant.

7. The Court erred in finding that the defendant agreed with the complainant that he would bid an amount equal to the judgment as to principal, interest and accruing costs and expenses of sale when the sheriff should offer the said real property above described for sale under the execution issued in Wight et al. vs. complainant.

[41] 8. The Court erred in finding that the defendant, pursuant to the agreement above referred to, appeared at the said sale and did bid pursuant to his alleged agreement with the complainant to hold the said title as security for his bid.

9. The Court erred in finding that the complaint was able to redeem the property described in his bill of complaint and was willing to do so and signified his intention and desire to do so at many times between the 6th day of June, 1913, and the 6th day of June, 1914.

10. The Court erred in finding that the defendant informed complainant repeatedly that after the period of one year from the date of the said execution sale might expire, provided there was no redemption, defendant would hold any title that might

be obtained by reason of the expiration of time merely as a mortgage to secure the repayment from the complainant of the sum bid at the execution sale by the defendant and interest thereon at the rate of eight per cent per annum.

11. The Court erred in finding that, between the 6th day of June, 1913, and the 6th day of June, 1914, the defendant agreed with the complainant that if the complainant at any time after the said 6th day of June, 1914, would repay to the defendant the sum of one thousand four and 15/100 (\$1,004.15) dollars, together with interest at the rate of eight per cent per annum, defendant would reconvey to [42] complainant all of the real property described in plaintiff's bill of complaint.

12. The Court erred in finding that the deed from the sheriff of Silver Bow County to the defendant, issued on the 11th day of June, 1914, was obtained by reason of the alleged trust reposed in the alleged promise and alleged agreement of the defendant alleged to have been made to complainant to reconvey at any time to complainant the said lands, upon payment of the said amount of money bid by the defendant at the execution sale of Wight and others versus complainant.

13. The Court erred in finding that, had complainant sought bidders, complainant's interest in any one of the four parcels of land described in plaintiff's bill of complaint would have brought the amount of the said judgment of Ira T. Wight et al. versus complainant.

14. The Court erred in finding that no other per-

sons were present at the said sale except the complainant, defendant, the sheriff or his deputy and one of the plaintiffs.

15. The Court erred in concluding that the plaintiff was entitled to recover of and from the defendant the interest in the mining claims set out in the complaint and claimed by him.

16. The Court erred in finding that the defendant agreed to bid in the property described in complainant's bill of complaint for the amount of the judgment in Wight [43] and others versus complainant and hold it until plaintiff redeemed.

17. The Court erred in finding that complainant was let to believe by the defendant that he need not redeem within the time fixed by the statute in conventional cases, and that complainant relied thereon and acted accordingly.

18. The Court erred in concluding that where the purchaser at sheriff's sale leads the judgment debtor to believe he can redeem after the statutory time runs and thus causes him to fail to redeem before the statute runs, the purchaser waives the time and the debtor can redeem within a reasonable time after the statute runs.

19. The Court erred in concluding that in the present case, the complainant offered to redeem within a reasonable time after the period of redemption expired.

WHEREFORE the said defendant, Rod D. Leggat, prays that the said decree of the said District

Court of the United States for the District of Montana be reversed.

NOLAN and DONOVAN,
Solicitors for Defendant.

Service of the foregoing assignment of errors acknowledged and copy thereof received this 12th day of February, 1916.

GUNN, RASCH & HALL,
MAURY, TEMPLEMAN & DAVIES,
Solicitors for Complainant.

Filed Feb. 9th, 1916. Geo. W. Sproule, Clerk.

[44] Thereafter, on Feb. 9, 1916, Petition for Appeal and Allowance was duly filed herein, in the words and figures following, to wit:

[45] *United States District Court, in and for the
District of Montana.*

CHARLES D. McLURE,
vs. Complainant,

ROD D. LEGGAT,
Defendant.

Petition for Appeal and Allowance.

The above-named defendant, Rod D. Leggat, conceiving himself aggrieved by the decree entered in the above-entitled court on the 8th day of Feb., 1916, in the above-entitled cause, does hereby appeal from said decree to the United States Circuit Court of Appeals for the Ninth Circuit, for the reasons specified in the assignment of errors which is filed herewith, and he prays that an appeal be allowed and that a citation issue as provided by law, and that

a transcript of the records and proceedings upon which said decree was based duly authenticated may be sent to the said Circuit Court of Appeals for the Ninth Circuit, and your petitioner further prays that a proper order touching the security to be required by him to effect his appeal be made.

NOLAN and DONOVAN,
Solicitors for Defendant.

[46] The foregoing petition is hereby granted and the appeal is hereby allowed this 9th day of February, 1916, and the bond on appeal is hereby fixed in the sum of three hundred (\$300) dollars.

GEORGE M. BOURQUIN,
District Judge.

Service of the foregoing petition for appeal and allowance and copy acknowledged as received this 12th day of February, 1916.

GUNN, RASCH & HALL,
MAURY, TEMPLEMAN & DAVIES,
Solicitors for Complainant.

Filed Feb. 9, 1916. Geo. W. Sproule, Clerk.

[47] Thereafter, on Feb. 12, 1916, Bond on Appeal was duly filed herein, in the words and figures following, to wit:

[48] *United States District Court, in and for the
District of Montana.*

CHARLES D. McLURE,
vs.
ROD D. LEGGAT,
Complainant,
Defendant.

Bond on Appeal.

KNOW ALL MEN BY THESE PRESENTS, that we, ROD D. LEGGAT, as principal, and D. J. Fitzgerald and Frank Boucher, as sureties, are held and firmly bound unto the above-named Charles D. McLure in the sum of three hundred (\$300) dollars, the payment of which well and truly to be made we bind ourselves jointly and severally, and each of our heirs, executors, administrators, successors and assigns, firmly by these presents.

Sealed with our seals and dated this 12th day of February, 1916.

Whereas the above-named defendant has prosecuted an appeal to the United States Circuit Court of Appeals for the Ninth Circuit, to reverse a decree rendered and entered in the above-entitled cause in the United States District Court for the District of Montana, on the 8th day of Feb., 1916;

NOW, therefore, the condition of this obligation is such that if the above-named defendant, Rod D. Leggat, shall [49] prosecute his said appeal to effect, and shall answer all damages and costs that may be awarded against him if he fails to make good his plea, then the above obligation is to be void, otherwise to remain in full force and virtue.

IN WITNESS WHEREOF, we hereto set our hands this 12th day of February, 1916.

ROD D. LEGGAT.

By ALEXANDER LEGGAT,

His Attorney in Fact.

D. J. FITZGERALD.

FRANK BOUCHER.

State of Montana,
County of Silver Bow,—ss.

D. J. Fitzgerald and Frank Boucher, sureties on the foregoing bond, being severally sworn, each for himself, says: That he is a resident and freeholder within this State, and is worth the sum specified in the foregoing bond as the penalty thereof over and above all his just debts and liabilities and exclusive of property exempt from execution.

D. J. FITZGERALD.

FRANK BOUCHER.

Subscribed and sworn to before me this 12th day of February, 1916.

T. F. NOLAN,

Notary Public for the State of Montana, Residing
at Butte, Montana.

My commission expires June 17, 1917.

[50] The foregoing bond on appeal is hereby approved this 12th day of Feb., 1916.

BOURQUIN.

District Judge.

Service of the foregoing bond on appeal acknowledged and copy thereof received this 12th day of February, 1916.

GUNN, RASCH & HALL,

MAURY, TEMPLEMAN & DAVIES,

Solicitors for Complainant.

Filed Feb. 12, 1916. Geo. W. Sproule, Clerk.

[51] Thereafter, on Feb. 12, 1916, Citation was duly issued herein, which Citation is hereto annexed and is in the words and figures following, to wit:

[52] *United States District Court, in and for the District of Montana.*

CHARLES D. McLURE,

Complainant,

vs.

ROD D. LEGGAT,

Defendant.

Citation on Appeal.

The President of the United States to Charles D. McLure, Complainant, and to Messrs. Gunn, Rasch & Hall, and Maury, Templeman & Davies, His Solicitors, Greeting:

You are hereby cited and admonished to be and appear before the United States Circuit Court of Appeals for the Ninth Circuit at the city of San Francisco, State of California, within thirty days from the date hereof, pursuant to an appeal filed in the office of the District Court of the United States in and for the District of Montana, wherein Rod D. Leggat is the appellant and Charles D. McLure is the appellee, to show cause, if any there be, why the decree in the said appeal mentioned should not be corrected and why speedy justice should not be done to the parties in that behalf.

WITNESS the Hon. GEORGE M. BOURQUIN, District Judge of the United States District Court in

and for the District of Montana, this 12 day of Feb., 1916.

BOURQUIN,
District Judge.

[53] Service of the foregoing citation on appeal acknowledged and copy thereof received this 12th day of February, 1916.

GUNN, RASCH & HALL,
MAURY, TEMPLEMAN & DAVIES,
Solicitors for Complainant.

[54] [Endorsed]: No. 22. United States District Court, District of Montana. Charles D. McLure, Complainant, vs. Rod D. Leggat, Defendant. Citation on Appeal. Filed Feb. 12, 1916. Geo. W. Sproule, Clerk. By Harry H. Walker, Deputy Clerk.

[55] That on the 25th day of February, 1916, Praeceptum for Transcript on Appeal was duly filed herein, in the words and figures following, to wit:

*In the District Court of the United States for the
District of Montana.*

CHARLES D. McLURE,

Plaintiff,

vs.

ROD D. LEGGAT,

Defendant.

Praeceptum [for Transcript of Record].

To the Clerk of the Above-entitled Court:

You are hereby requested to make a transcript of record to be filed in the United States Circuit

Court of Appeals for the Ninth Circuit, pursuant to appeal allowed in the above-entitled cause, and to incorporate into such transcript of record the following and no other papers, or exhibits, to wit:

1. The plaintiff's bill of complaint.
2. Defendant's answer.
3. Plaintiff's amendment to his bill of complaint filed —, 1915.
4. Defendant's amendment to his answer filed —, 1915.
5. The decision of the Court with memorandum attached thereto, filed on the 22d day of January, 1916.
6. Decree of the Court rendered herein February 8, 1916.
7. Defendant's assignment of errors.
8. Defendant's petition for appeal and allowance.
9. Bond on appeal.
10. Citation on Appeal with admission of service.
11. The condensed statement of the evidence.

And that the same be duly certified by you as required by law and the rules of court; and that you further state in your [56] certificate under seal, the cost of the record and by whom paid.

NOLAN & DONOVAN,
Attorneys for Defendant.

Service of the foregoing praecipe acknowledged and copy thereof received this 24th day of February, 1916.

GUNN, RASCH & HALL,
MAURY, TEMPLEMAN & DAVIES,
Attorneys for Defendant.

Filed Feb. 25, 1916. Geo. W. Sproule, Clerk.

[57] Thereafter, on March 6, 1916, Statement of Evidence on Appeal was duly approved and filed herein in the words and figures following, to wit:

[58] *In the District Court of the United States for the District of Montana.*

Before Hon. GEORGE M. BOURQUIN, Judge.

At Helena, Montana.

CHARLES D. McLURE,

Plaintiff,

vs.

ROD D. LEGGAT,

Defendant.

Condensed Statement of Evidence.

June 21st and 22d, 1915.

APPEARANCES:

Messrs. MAURY, TEMPLEMAN & DAVIES,
and Messrs. GUNN, RASCH & HALL, for
Plaintiff.

Messrs. NOLAN & DONOVAN, and Messrs.
WALSH, NOLAN & SCALLON, for De-
fendant.

[Testimony of L. P. Sanders, for Plaintiff.]

[59*—1†] L. P. SANDERS, a witness called in behalf of the plaintiff, after being duly sworn, testified as follows:

Direct Examination by Mr. MAURY.

The WITNESS.—My name is L. P. Sanders. I

*Page-number appearing at top of page of original certified Record.

†Original page-number appearing at top of page of Condensed Statement of Evidence as same appears in Certified Transcript of Record.

(Testimony of L. P. Sanders.)

am an attorney at law, practicing in Silver Bow County for the last fifteen or twenty years, since 1900. I am acquainted with the defendant in this case, Mr. Rod D. Leggat, and with Mr. Chas. D. McLure, the plaintiff.

Q. Now, in a general, professional way, I will ask you if you are acquainted with the ground described as the Eastern quartz lode mining claim Survey No. 1230, Silver Bow County, Montana, the Ouichita quartz lode mining claim, Survey No. 1239, the Bland quartz lode mining claim, Survey No. 1160, situated in the northern portion of the Butte District?

A. I never was on the ground, but I am familiar with the maps, and know there are such claims within the Summit Valley Mining District in the county.

During the year 1912 I bore some professional relations with Messrs. Wolvin and Hayes—the firm of Kremer, Sanders and Kremer did. The matters were under my immediate charge as a member of the firm. During the summer of 1912, with the Eastern quartz lode mining claim, I had negotiations and transactions with Mr. Leggat on behalf of Wolvin & Hayes. I did not have any negotiations directly with McLure prior to the 1st day of July, 1912. My recollection is that I did not see Mr. McLure until subsequent to that time.

Q. Will you tell us, now, the nature of Mr. Leggat's business about that claim with you, and what he said, and what he did?

(Testimony of L. P. Sanders.)

[60—2] A. The firm of Kremer, Sanders & Kremer represented Wolvin & Hayes, who were acquiring portions of a large number of mining claims, or interests in mining claims lying north of the operating mines in Butte in the vicinity of the Butte and Superior, and they desired a bond upon the Eastern and other claims, and sometime prior to the 1st day of July of that year I had a conference with Mr. Rod D. Leggat, in behalf of Wolvin & Hayes desiring to secure an option on this claim, a three-quarter interest, as I recall it, in the Eastern belonged to Mr. McLure. I don't think I had examined the abstracts of title; but on the first conference I had, I knew that much, that Mr. McLure had an undivided three-quarters interest, and the balance of the claim belonged to T. Stewart White and Mr. Rod D. Leggat. Mr. T. Stewart White, to my knowledge, was never in Montana during these negotiations; I had never seen him, nor was Mr. McLure, either. Mr. Leggat advised me that the consideration for the Eastern under the option to Wolvin & Hayes was \$200,000, ten per cent of which was to be paid down simultaneously with the execution of the option and deposited in the State Savings Bank of Butte, Montana. I inquired of Mr. Leggat as to the means of securing some conveyance, or acquiescence in the option from the opposing owners, T. Stewart White and Mr. Charles D. McLure. At that time he told me, substantially, I cannot repeat his exact language, but he told me substantially, that he was handling the

(Testimony of L. P. Sanders.)

matter for T. Stewart White and Charles D. McLure, and that they would be satisfied with whatever he did with reference to the execution of this option.

Q. Did Rod D. Leggat sign any papers in your presence with reference to this ground?

A. I desire to say that, as to the option which was executed [61—3] on or about the last day of July, 1912, upon being subpoenaed in this case I made a search, that is, I made inquiry of the officers of the Butte & Superior Copper Co., Limited, and I have been unable to obtain a copy of that option, as I am advised it has been sent to New York to Wolvin & Hayes subsequently to the execution of the option on July 1st, 1912, or about that time, assigning and transferring all their rights to the Butte & Superior Copper Co., Limited, or on or about the 1st day of July, and my best recollection at this time is that Mr. Rod D. Leggat signed this paper which I have in my hand, and I signed it as the agent for Wolvin & Hayes.

Mr. MAURY.—We offer this paper in evidence at this time and ask that it be marked Plaintiff's Exhibit "A," and made a part of the record.

Plaintiff's Exhibit "A" received in evidence without objection, and is as follows:

[Plaintiff's Exhibit "A," Option, July 1, 1912.]

"This envelope contains check for \$20,000, and an option agreement whereunder Rod D. Leggat agrees to sell A. B. Wolvin and John M. Hayes, all of the Eastern quartz lode mining claim, Survey No. 1230,

situated in the Silver Bow County, Montana, total purchase price, \$200,000, if the option exercised. Payments thereof as follows: 10% on July 1st, 1912; 20% on or before January 1st, 1913; 70% on or before January 1st, 1914; Leggat agrees that he will cause to be made and executed good and sufficient deed of conveyance to Wolvin & Hayes, or their assigns, to all of the Eastern lode claim free and clear of the incumbrances and dower rights, and will place such deed in escrow in the State Savings Bank of Butte, Montana, said deed to be delivered to Wolvin & Hayes, or their assigns, upon payments as above.

Enclosed check is for \$20,000 for payment of the foregoing 10% on said purchase price, to be held by you for [62—4] payment to the owners of the said claim provided they deposit with you a deed or deeds conveying to Wolvin & Hayes, or their assigns, the title above described. Others besides Leggat own the claim described, but he has agreed to cause good and sufficient title to be conveyed, hence no part of this \$20,000 is to be paid to him until he has complied with his agreement. You will hold this \$20,000 until such time as he has complied with the enclosed option. Wolvin & Hayes will advise you when good and sufficient title to all of said claim has been conveyed to them by the owners of said claim and thereafter payment of the enclosed will be made to such owners.

WOLVIN & HAYES.

By L. P. SANDERS,

Agent

ROD D. LEGGAT.

Dated this 1st day of July, 1912."

(Testimony of L. P. Sanders.)

Q. Was this paper which I now hand you signed subsequently?

A. To the best of my recollection at this time, Mr. Rod D. Leggat and Mr. Charles D. McLure, signed the paper which I hold in my hand, and I signed it on behalf of Wolvin & Hayes. This was at a time in August, 1912, and Mr. Charles D. McLure had reached the city of Butte, Montana.

Q. Is this paper one which has reference to the same transaction as the other paper?

A. Yes, it states that this escrow agreement is to be taken in connection with that certain escrow agreement of July 1st, 1912, deposited herein, signed by Rod D. Leggat and Wolvin & Hayes, and which has been introduced in evidence this morning.

Mr. MAURY.—We offer this paper in evidence and ask that it be marked Plaintiff's Exhibit "B."
[63—5]

Paper received in evidence, without objection, marked Plaintiff's Exhibit "B," and is as follows:

**[Plaintiff's Exhibit "B," Escrow Agreement,
August 3, 1912.]**

"August 3d, 1912.

State Savings Bank,
Butte, Montana.

Gentlemen: In the within envelope is an agreement by Rod D. Leggat to A. B. Wolvin and John M. Hayes, to sell the Eastern Lode, Silver Bow County, Montana, dated June 20, 1912. The Eastern Lode is owned one-eighth by Rod D. Leggat; one-eighth

by T. Stewart White; six-eighths by Charles D. McLure.

Also enclosed are executed deeds by Leggat and wife, Stewart and wife, and C. D. McLure. Also enclosed is an agreement by Charles D. McLure with said Wolvin and Hayes. If Messrs. Wolvin and Hayes exercise the right to purchase, there is due to the owners of the Eastern Lode a balance of one hundred and eighty thousand (\$180,000) Dollars, which must be paid as per the agreement herein contained. In the event any payments are made on account of the within agreements, credit as follows:

One-eighth ($\frac{1}{8}$) to Rod D. Leggat; one-eighth ($\frac{1}{8}$) to T. Stewart White; and, when deeds have been deposited in this bank as provided in enclosed option of agreement between C. D. McLure and Wolvin and Hayes, credit three-quarters ($\frac{3}{4}$) to Charles D. McLure and Charles D. McLure as guardian, as in said option provided. Deliver the deeds to Messrs. Wolvin & Hayes, or their nominee, only upon last payment as in the enclosed agreement provided.

Out of the \$20,000 heretofore deposited on July 1st, 1912, with this bank, you will pay \$15,000 thereof to Charles D. McLure, (he having this day deposited in this bank [64—6] deed from himself to Wolvin & Hayes), \$2,500 to Rod D. Leggat and \$2,500 to T. Stewart White. Future payments, if any, to be made to the party of the first part as in said option provided.

A substituted deed from Stewart White and wife

(Testimony of L. P. Sanders.)

to Wolvin and Hayes will later be delivered to Bank to take the place of the enclosed deed from White and wife to Wolvin & Hayes.

This escrow agreement to be taken in connection with that certain escrow agreement of July 1st, 1912, deposited herein, signed by Rod D. Leggat and Wolvin & Hayes. Time is of the essence of said agreement.

ROD D. LEGGAT,
CHARLES D. McLURE,
WOLVIN & HAYES,
By L. P. SANDERS.”

Cross-examination by Mr. NOLAN.

The WITNESS.—There were subsequent transactions with McLure, Leggat and White for this purchase. Twenty thousand dollars, ten per cent of the purchase price was deposited by Wolvin and Hayes through me in the bank for this option; Mr. Leggat secured a deed from T. Stewart White at my request; that was, to my best recollection also deposited in the bank, this deed from T. Stewart White. At any rate, that is my best recollection at this time; among these papers I found a carbon copy of a deed, a duplicate original signed by T. Stewart White and Mary E. White, acknowledged by them before Robert Finch, a notary public in Grand Rapids, Michigan, to an undivided one-eighth interest in and to the Eastern quartz lode mining claim, lot No. 169, township 3 North, range 7 West. I do not know where the original is. I assume it is in the bank. This is a copy,

(Testimony of L. P. Sanders.)

but I do not recollect why it was executed in duplicate. On the 2d day of August, 1912, Charles D. McLure executed and acknowledged [65—7] before John L. Templeman, a notary public, in Butte, an option to A. B. Wolvin and John M. Hayes upon an undivided three-fourths interest in and to the Eastern quartz lode mining claim, the consideration being \$150,000, on the basis of \$200,000 for the entire claim, and I found these papers, which likewise appears to be a carbon copy, but made a duplicate of the original, and here it is. That was executed by Mr. McLure by reason of the unfortunate condition of Mrs. McLure, and was elaborated, she being incapable of legally executing the papers and handling the matter, and he assumed to obligate himself to take all necessary steps to have her interest conveyed, in the event that the option was taken up. I am not sure, but I believe you asked me as to how much Mr. McLure got out of the twenty thousand dollars which was the original ten per cent payment on the option. I have no knowledge as to that, the twenty thousand dollars was deposited in the bank, and somebody got it, some or all of the parties interested, T. Stewart White, Charles D. McLure and Rod D. Leggat got the money, the option afterwards being thrown up.

Q. This instrument of the 12th of July, was the one on which you got the lease and option on Mr. McLure's interest in the Eastern?

A. The twenty thousand dollars was payed into the bank on or about the 1st of July, 1912, upon Mr. Rod

(Testimony of L. P. Sanders.)

D. Leggat's executing an escrow agreement, the escrow agreement which is an exhibit here, an option which accompanied it subsequently to this option which you hold in your hands; Mrs. McLure was restored to mental competency and executed with her husband other papers affecting arrangements.

Mr. NOLAN.—We offer this paper in evidence as a part of the same transaction and ask that it be marked Plaintiff's Exhibit "C."

[66—8] Plaintiff's Exhibit "C" received in evidence without objection, and is as follows:

[Plaintiff's Exhibit "C," Lease—August 2, 1912.]

"THIS INDENTURE made this 2d day of August, 1912, between CHARLES D. McLURE, party of the first part, A. B. WOLVIN and JOHN M. HAYES, party of the second part, WITNESSETH:

Whereas, the party of the first part is the owner of an undivided seven-twelfths interest in and to the Eastern quartz lode mining claim, Lot No. 169, Tp. 3 North of Range 7 West, Montana principal meridian, and claims to be the owner of an additional one-sixth interest in said Eastern quartz lode mining claim by virtue of conveyances of such interest from the heirs at law of his mother, Mrs. Margaret E. McLure, now deceased; and

Whereas, it is the intention of the parties hereto for the party of the first part to give unto the parties of the second part an option to purchase the entire seven-twelfths and one-sixths interest in the said Eastern quartz lode mining claim at the price of one hundred and fifty thousand (\$150,000) dollars,

to be paid as hereinafter set forth.

NOW, THEREFORE, for and in consideration of the sum of one (\$1) dollar and other valuable considerations, cash in hand paid, the receipt whereof is hereby acknowledged, the said party of the first part does grant unto the said parties of the second part the right and privilege of purchasing the foregoing interest, in all a three-fourths undivided interest in the above-named quartz lode mining claim upon the terms and conditions hereinafter specified, and does undertake and agree that he will in all respects comply with the conditions, covenants and obligations hereinafter set forth, and to be by him complied with. The property covered by this option, and to purchase which said option is given in accordance with the terms [67—9] and conditions hereof is as follows:

An undivided three-fourths interest in and to the Eastern quartz lode mining claim above described; all of the above-described property being in Summit Valley Mining District, Silver Bow County, Montana. The purchase price of said undivided three-fourths interest in and to said Eastern quartz lode mining claim under said option shall be the sum of \$150,000, and the time and manner of making payment of the purchase price under said option shall be as follows:

Ten per cent. of the said purchase price, to wit, the sum of \$15,000, is payable forthwith upon the execution of this instrument, and upon the deposit in bank as herein provided, of a deed executed in so far

as Charles D. McLure personally is concerned, conveying by good and sufficient title, as far as Charles D. McLure personally is concerned, the said undivided three-fourths interest in said lode claim; and as to the said undivided one-sixth interest in and to the said lode claim claimed to be owned in fee simple absolute by Charles D. McLure, subject, however, to the inchoate right of dower of the wife of said Charles D. McLure, the said Charles D. McLure will forthwith proceed to cause an administrator of the estate of Mrs. Margaret McLure to be appointed with all reasonable diligence by the District Court of the Second Judicial District of the State of Montana, in and for the County of Silver Bow, and he, the said Charles D. McLure, will procure with all diligence a decree of distribution to himself as the assign of all of the heirs of the said Mrs. Margaret E. McLure of the said undivided one-sixth interest in the Eastern quartz lode mining claim, or else he, the said Charles D. McLure, will [68—10] establish the fact before the said court and procure a decree of the said court establishing the said fact that Mrs. Margaret E. McLure never was the owner of any portion of the said one-sixth interest except as trustee of the said Charles D. McLure, he being at all times the equitable owner of all of said one-sixth interest, and entitled to a conveyance of the legal title from Mrs. Margaret E. McLure, wherever he should request the same; and if within twelve months from date hereof, the said Charles D. McLure does not procure such decree of distribution to him, or such

establishment before the said court of the fact that he was entitled to such conveyance from all of the heirs, creditors and representatives and devisees and legatees of Mrs. Margaret E. McLure, then, upon demand of said A. B. Wolvin and John M. Hayes or their heirs, representatives and assigns, the said Charles D. McLure will repay unto the said party of the second part herein, or their heirs or assigns, such portion of the purchase price for the said Eastern quartz lode mining claim as shall heretofore have been paid for, or on account of the said undivided one-sixth interest in the said quartz lode mining claim; it being understood and agreed that as to the seven-twelfths interest not so clouded, the portions of purchase price which shall have been already paid shall in no wise be affected by this agreement.

And furthermore, it is agreed that with due diligence the said Charles D. McLure will proceed to procure as guardian of Mrs. Clara Edgar McLure, his wife, proper orders and deeds of conveyance of her inchoate right of dower of all of the lands herein described and conveyed such inchoate right of dower hereunder, provided that such proceedings shall not at this time affect the rights of the said Charles D. McLure to the immediate possession and use of the first payment hereunder; but in the [69—11] event that such proceedings be not completed before the second payment hereunder then one-third of the second payment may be retained by the banking house mentioned until such inchoate right of dower be transferred or be cut off by death; and in the

event that such proceedings be not completed before the last payment hereunder, the one-third of the last payment may be retained by the banking house hereinafter mentioned until such inchoate right of dower be transferred or be cut off by death.

Twenty per cent of said purchase price on or before January 1st, 1912, provided said party of first part has within said time deposited or *cause* to be deposited *to* said bank the deed herein mentioned to Charles D. McLure to said parties of the second part, and caused to be performed the matters and things in the perfection in the said titles hereinbefore agreed to be performed by him; seventy per cent of said purchase price on or before January 1st, 1914, provided said party of first part has within said period deposited or caused to be deposited in said bank deed from Charles D. McLure to said parties of the second part, and done and performed the covenants and agreements as to the perfection of the said titles hereinbefore set forth on him binding.

It is expressly understood and agreed that none of said payments upon the interests herein described shall be paid to the said party of the first part until the deed from Charles D. McLure to said parties of second part or their heirs or assigns has been deposited in said bank as herein provided, and said party of first part hereby agrees that he will, with all due diligence, proceed to institute and prosecute to a termination, all necessary and proper legal proceedings to the end and for the purpose of having all deeds and all of the necessary instruments duly

made and executed and deposited in escrow [70—12] in said bank for delivery to said parties of the second part or their assigns under the terms and convictions hereof, conveying unto the said parties of the second part, their assigns, the interest in said mining claim, together with all of the right, title and interest of said party of first part, and of any person who has or claims to have or who shall hereafter have or claim to have any interest, estate, claim or right in and to said interest, in and to said mining claim, free and clear from all incumbrances and dower rights, and said deeds conveying, by good and sufficient title said interest, together with all of the right, title and interest of the said party of the first part, and of his wife, and of any other person whomsoever who may have an estate or interest in and to the above-described three-fourths interest in the said lode claim, shall be placed in the State Savings Bank of Butte, Montana, with directions therewith instructing and requiring the said banking house to deliver said deed of conveyance to the said A. B. Wolvin and John M. Hayes, or their assigns, or to whomsoever said A. B. Wolvin and John M. Hayes shall designate upon the payment of the purchase price of the said interest herein named within the time herein provided.

It is further agreed and understood that all payments to be made hereunder at the option of the parties of the second part are to be paid into the State Savings Bank, of Butte, Montana, as follows: Two-thirds of each payment herein provided for to the

credit of Charles D. McLure, and one-third to the credit of Charles D. McLure, as guardian of the person and estate of Clara Edgar McLure, an insane person.

For and in consideration of the foregoing, and of the royalties, covenants and agreements hereinafter mentioned, and of the sum of \$1, cash in hand paid, receipt of which is [71—13] hereby acknowledged, the said party of the first part does hereby grant, demise and let unto the said A. B. Wolvin and John M. Hayes, or their assigns, all of the foregoing described mine and mining claim, to have and to hold unto the said A. B. Wolvin and John M. Hayes, or their assigns, during the life of the option and agreement, and that during such terms the said A. B. Wolvin and John M. Hayes, or their assigns, shall have the right to enter upon the said mining property and premises and work the same in a minerlike fashion, and to prospect and develop the same, and to occupy and let full possession of all of said premises; it being especially understood and agreed that if said party of second part should elect to do any work thereon they may do the same in such place and in such manner and in such amount as they may see fit.

In consideration whereof, the said A. B. Wolvin and John M. Hayes, for themselves, or on behalf of their assigns, agree to pay to the said party of the first part, as royalty, twenty-five per cent of the net smelter or mill returns of all ore to be extracted and shipped from said premises, and that the amount of said royalties, if any so *paid*, said deduction to be

made upon the next payment due hereunder, following the payment of said royalties, if any.

It is further agreed that the said party of first part, shall at all reasonable times have the privilege of entering into and examining all workings of said property, and shall be given free and ready access thereto so long as same does not interfere with mining operations conducted on said premises.

It is mutually understood that each and every clause of this agreement shall extend to and be binding upon the heirs, administrators, executors and lawful assigns of the respective parties hereto.

[72—14] It is further understood and agreed by and between the parties hereto, that in the event the parties of the second part shall fail to exercise the said option purchase herein given within the time prescribed by the payment of the amounts herein designated, all sums paid hereunder shall be and become the property of the party of the first part (providing he, the said party of the first part, has not, through failure to get clear title of the one-sixth interest bought by him from the heirs of Mrs. Margaret E. McLure, caused delay himself, or by the failure to give clear title to the inchoate right of dower of Mrs. Clara Edgar McLure, caused delay himself); and in such event, all of obligations upon the part of all parties hereto shall terminate, and upon a failure of the parties of the second part, or their assigns, to make such payments within the time and in the manner prescribed, the said party of the first part shall have the right at once to re-enter and take possession of such property.

Time is strictly of the essence of this contract, but it is understood that due diligence only is required of Charles D. McLure in the matter of court proceedings as to clearing his title to the one-sixth interest, and as to getting the right to sell his wife's inchoate right of dower.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seal the day and year first above written.

CHARLES D. McCLURE."

Acknowledged before John L. Templeman, Notary Public, for the State of Montana, residing at Butte, Montana, on the 2d day of August, 1912.

(Notarial Seal)

[73—15] Q. Do these papers contain any recent negotiations between Mr. McLure and this company?

A. I have no recollection of it, I can't say, I don't believe they do.

Mr. NOLAN.—We also offer in evidence at this time deed dated August 8th, 1912, as a part of the said transaction and ask that it be marked Defendant's Exhibit 1, and made a part of the record.

Defendant's Exhibit 1 received in evidence without objection, and is as follows:

**[Defendant's Exhibit 1—Agreement, August 8, 1912
—Thomas Stewart White et ux. and A. B. Wolvin et al.]**

"THIS INDENTURE made and entered into this 8th day of August, 1912, by and between Thomas Stewart White, and Mary E. White, his wife, parties of the first part, and A. B. Wolvin and J. M. Hayes,

parties of the second part:

WITNESSETH: That for and in consideration of the sum of One (\$1) Dollar, and other valuable considerations, cash in hand paid, the receipt of which is hereby acknowledged, the said parties of the first part do hereby grant unto said parties of the second part the right and privilege of purchasing all of the following described property upon the terms and conditions herein specified, to wit:

The property covered by this option and to purchase which said option is given in accordance with the terms and conditions hereof is as follows:

All of the right, title and interest of the parties of the first part in and to an undivided one-eighth ($\frac{1}{8}$) interest in and to the 'Eastern' Quartz Lode Mining claim, Lot 169, Township 3 North of Range 7 West, Montana Principle Meridian.

All of the above-described property being in Summit Valley Mining District, Silver Bow County, Montana.

The purchase price of said property under said option [74—16] shall be the sum of twenty-five thousand (\$25,000) dollars, and the time and manner of making payments of said purchase price under said option shall be as follows:

Ten per cent of said purchase price upon the execution and delivery as herein provided of a deed executed by the parties of the first part and deposited in the State Savings Bank of Butte, Montana;

Twenty per cent (20%) of said purchase price on or before January 1st, 1914, provided said deed has so been deposited.

Seventy per cent (70%) of said purchase price on or before January 1st, 1914, provided said deed has so been deposited.

And it is further stipulated and agreed that contemporaneous with the execution of this instrument, that said parties of the first part will cause to be made and executed a good and sufficient deed of conveyance, conveying unto the said A. B. Wolvin and J. M. Hayes, or their assigns, or any person or persons whom they may designate, all of the said above-described property, free and clear from all encumbrances and dower rights, and said deed shall be placed in escrow in the banking house of the First National Bank of Butte, Montana, with directions therewith instructing and requiring the said banking house to deliver the said deed of conveyance to the said A. B. Wolvin and J. M. Hayes, or their assigns, or to whomsoever said A. B. Wolvin and J. M. Hayes shall designate, upon the payment of the purchase price herein named within the time herein provided.

It is further agreed and understood that all payments to be made hereunder may, at the option of the parties of the second part, be paid unto the First National Bank of Butte, Montana, to the credit of the parties of the first part.

[75—17] For and in consideration of the foregoing, and of the royalties, covenants and agreements hereinafter mentioned, and of the sum of one (\$1) dollar, cash in hand paid, and receipt of which is hereby acknowledged, the said parties of the first part do hereby grant, demise and let unto the said A. B. Wolvin

and J. M. Hayes, or their assigns, all of the foregoing described mines and mining claims; to have and to hold unto the said A. B. Wolvin and J. M. Hayes, or their assigns, during the life of the option and agreement, and that during said term the said A. B. Wolvin and J. M. Hayes, or their assigns, shall have the right to enter upon said mining property and premises and work the same in a minerlike fashion, and to prospect and develop the same and to occupy and hold full possession of all said premises, it being especially understood and agreed that if said parties of the second part should elect to do any work thereon, they may do the same in such place and in such manner and in such amount as they may see fit. In consideration whereof, the said A. B. Wolvin and J. M. Hayes, for themselves, or on behalf of their assigns, agree to pay to the said parties of the first part as royalty twenty-five (25%) per cent of the net smelter returns of all ore to be extracted and shipped from said premises, and that the amount of said royalties, if any, so paid shall be deducted from the purchase price herein set forth, said deduction to be made upon the next payment due hereunder, following the payment of said royalties, if any.

It is further agreed that the said parties of the first part shall at all reasonable times have the privilege of entering into and examining all the workings of said property and shall be given free and ready access thereto so long as the same does not interfere with mining operations conducted on said premises.

[76—18] It is mutually agreed that each and every clause of this agreement shall extend to and be

binding upon the heirs, administrators, executors and lawful assigns of the respective parties hereto.

It is further understood and agreed by and between the parties hereto that in the event the parties of the second part shall fail to exercise the said option to purchase herein given within the time prescribed by the payment of the amounts herein designated, all sums so paid hereunder shall be and become the property of the parties of the first part, and all obligations upon the part of all parties hereto shall terminate; and upon a failure of the parties of the second part or their assigns to make such payments within the time and in the manner prescribed the said parties of the first part shall have the right to at once re-enter and take possession of said property. Time is of the essence of this agreement.

IN WITNESS WHEREOF the parties hereto have hereunto set their hands and seals the day and year first above written.

T. STEWART WHITE,

MARY E. WHITE,

A. B. WOLVIN,

JOHN M. HAYES,

By L. P. SANDERS,

Agent.

State of Michigan,
County of Kent,—ss.

On this 8th day of August, 1912, before me, the undersigned, a notary public for the State of Montana, personally appeared Thomas Stewart White and Mary E. White, his wife, known to me to be the parties whose names are subscribed to the within in-

(Testimony of L. P. Sanders.)

strument, and who acknowledged to me that they executed the same.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my notarial seal the day and year in this certificate first above written.

[Seal]

ROBT. FINCH,

Notary Public for the State of Michigan, residing at Grand Rapids, Michigan.

My commission expires Aug. 10, 1915.

[77—19] The WITNESS.—I can't say whether there have been any recent negotiations between Mr. McLure and the Butte & Superior Company for the purchase of his interest of the Eastern and Ouichita claims. I think there have been negotiations, but I had no part in them. Mr. Kremer, my partner, attended to the negotiations comparatively recently, and I don't remember whether the price at which Mr. McLure offered to sell his interest in the Eastern and Ouichita claims to the Butte and Superior Company was forty thousand dollars or one hundred and forty thousand dollars; I don't know from my own personal knowledge, but I heard some talk.

Redirect Examination by Mr. MAURY.

The WITNESS.—In the first instance I put the twenty thousand dollars I spoke of in the bank, and it was to be paid to the owners of the Eastern upon the deposit in the bank by them of good and sufficient deeds. My very best recollection is that Mr. Leggat and I went to the bank together and I put the check in there. None of the other owners were present. Mr. Leggat fixed the price on the property for all

(Testimony of L. P. Sanders.)

the parties. Mr. Leggat was the one who fixed the price for all the parties.

(Witness excused.)

[Testimony of James E. Murray, for Plaintiff.]

[78—20] JAMES E. MURRAY, a witness called on behalf of the plaintiff, after being duly sworn, testified as follows:

Direct Examination by Mr. DAVIES.

The WITNESS.—I am an attorney at law practicing my profession in Butte, Silver Bow County, Montana. I have been acting as attorney for Mr. James A. Murray, the banker, at Butte. I also acted for the Hennessy Company in one suit, but I do not represent them generally. I know Mr. Rod D. Leggat, the defendant in this suit. I know Mr. Charles D. McLure, the plaintiff. As the attorney representing Mr. James A. Murray, I secured a judgment against Mr. Charles D. McLure. I would not be able to give you the date. I fought two suits against Mr. McLure. The first suit I brought against Mr. McLure was a number of years ago; the suit was brought to recover the sum of two thousand and some odd dollars which Mr. Murray claimed because of having paid that sum out in some suit that Mr. McLure was interested in; Mr. McLure came to Mr. Murray to get him to go on a bond in the Federal Court, and subsequently, after the suit had been lost by McLure, Mr. Murray was compelled to pay the bond. The last judgment I secured against him was sometime in 1913, I believe, as near as I can remember; it may have been in 1912, the year before that,

(Testimony of James E. Murray.)

but my best recollection is that it was during the year 1913. I would not be positive that it was prior to June 6, 1913. I made some effort to collect that judgment. I went to Mr. McLure about it, or at least I think he looked me up after I brought the suit, and I think I had a number of conversations with him after having brought the suit, and before entering judgment, and also after entering judgment, I had a number of conversations with him. I had a conversation with Mr. McLure wherein Mr. [79—21] Leggat was present shortly after the sale of this property on the Wight & Pew judgment. In fact nearly every conversation I had with Mr. McLure was at times when Mr. Leggat would be present. In fact I do not believe I ever saw Mr. McLure more than once or twice without Mr. Leggat being present. I think he came to my office once alone, but usually I would meet them at the hotel and Mr. Leggat would be with me.

Q. What was that conversation, the conversation you had shortly after the sale of this property?

A. Well, after securing the judgment, I told them that I wanted to know whether he would pay the amount, or whether I should proceed to enforce our claim by selling the property. It seems to me that during these negotiations I learned that the property had been sold under this Wight & Pew judgment and that it had been bought in by Mr. Leggat, or Mr. McLure told me that they expected to sell the property and that they did not want me to proceed in my matter so as to complicate the title any fur-

(Testimony of James E. Murray.)

ther, and that as soon as they sold it our judgment would be paid off, and requested me not to go ahead with it any further.

I can't give you any idea when this conversation was had, but it was sometime after I got my judgment, whatever date that judgment would be, it would be shortly after that judgment. It was subsequent to the sale under the Wight & Pew judgment, it was subsequent to the time that Mr. Leggat bought the property in, in fact I was told first—I didn't examine the record to see exactly what property was involved, but I was told at first that the Elvina was not included in it, but later on I learned that the whole four claims were included in that sale. My recollection is that Mr. Leggat was present at this conversation with Mr. McLure. He frequently, in that [80—22] conversation and other conversations, assured me that Mr. McLure would pay this judgment, and that Mr. McLure was very sorry that he had not attended to it before, because he regarded it as a sort of debt of honor and that he felt that Mr. Murray should be paid very promptly because he came to his assistance at a time when he needed a friend and went on this bond without any security whatever; and Mr. Leggat came to the bank to see Mr. Murray with Mr. McLure. Shortly after I brought the first suit, and at that time induced Mr. Murray to discontinue that suit and to accept a note from Mr. McLure, and the last suit was brought upon the note.

Now, I would not say that Mr. Leggat told me at

(Testimony of James E. Murray.)

any of these conversations that I had with Mr. McLure wherein Mr. Leggat was present, that he, Mr. Leggat, was simply holding the property for Mr. McLure, but Mr. McLure told me so. Mr. McLure told me in Mr. Leggat's presence and Mr. Leggat never denied it at all, at any time. I don't think any of these conversations with Mr. McLure, at which Mr. Leggat was present, were as late as the fall of 1914. I would not say that *that* there were any as late as the summer of 1914, July or August; I think they were all earlier than that. It may have been after the first of the year—it may have been after the first of the year, although I doubt very much whether I had any conversations with them later than January, 1914. I think it was 1913 that all of these conversations were had, and during the years before that. I had been talking to them off and on for a number of years. These transactions covered a number of years prior to that, and it was in 1913 that I brought the last suit on the promissory note.

I remember of bringing supplementary proceedings against Mr. Leggat. These conversations were before that, prior to the [81—23] supplemental proceedings. They were at least, or the last conversation I think we had would be a month or two prior to the supplementary proceedings. No, I can't remember the date of these supplementary proceedings. I intended to get those papers and look that up before I came over here, but I got busy on something else and didn't get much of a chance to do it.

I can't say how many times I have talked to Mr.

(Testimony of James E. Murray.)

McLure while Mr. Leggat was present since the sale of this property under the Wight & Pew judgment.

Q. And wherein, in these conversations, Mr. McLure has assured you that Mr. Leggat was just simply holding the property for him under that execution sale?

Mr. SCALLON.—We object to this question as the evidence sought to be elicited is incompetent, and not the best evidence of any agreement between the defendant and plaintiff. We also object to it as leading, and it is not in accord with preceding portions of the witness's testimony in assuming and suggesting that there were more than one conversation at which this alleged statement was made.

The COURT.—The objection will be overruled for the present, it may be assuming conditions which have not appeared as yet.

Mr. SCALLON.—We reserve for the present our right to make a motion to strike it out unless it be connected later on.

The COURT.—Unless this evidence is competent, it will receive no consideration. However, I think there should be no assumption. You may ask directly how many conversations there were the nature of which were as indicated in your question.

Q. How many conversations were there, Mr. Murray, wherein yourself and Mr. Leggat and Mr. McLure were present, and wherein Mr. McLure assured you that he still owned the property, and [82—24] Mr. Leggat was simply holding it for him under that execution sale.

(Testimony of James E. Murray.)

Mr. SCALLON.—To which we object as incompetent, irrelevant and immaterial.

The COURT.—The objection will be overruled for the present. Of course if the evidence is not competent it will be ignored. For the present the objection is overruled.

To which ruling of the Court counsel for defendant duly excepted.

A. There were two or three conversations in which the matter was discussed; of course, the representations made in the first conversation were that Mr. McLure owned the property and that Mr. Leggat had big it in and was going to carry it for him until a sale was made, and in the subsequent conversation they might not have repeated that statement, but the matter was referred to in a way that I was made to understand that they were trying to sell the property and as soon as they would sell it that Mr. Murray would get his money; I was urging them to hurry up and pay the claim that I had against them, and I think Mr. Leggat looked me up once or twice himself and wanted to have me go down to the hotel and meet Mr. McLure, and as I said before, Mr. Leggat was present at nearly every conversation I had. I said that Mr. Leggat looked me up once or twice with reference to this claim of mine—I sometimes, myself, would ask Mr. Leggat when he expected Mr. McLure in town, and he told me on one or two occasions when he expected him. Never at any of these conversations did Mr. Leggat claim that he owned the property, or that he was holding it for himself.

(Testimony of James E. Murray.)

He didn't say he was holding them for the purpose of making a sale, but he told me that they had endeavored to make a sale, and notwithstanding [83—25] the fact that the companies were holding these options to let them lapse, they expected to be able to make a deal with them yet. I remember at one time of also having a conversation with Mr. McLure wherein I accused him of putting this property, by virtue of this sale, out of his hands so I could not get hold of it. Mr. Leggat was not present at that time.

No cross-examination.

(Witness excused.)

[Testimony of William McLure, for Plaintiff.]

[84—26] WILLIAM McLURE, called as a witness on behalf of the plaintiff, after being duly sworn, testified as follows:

Direct Examination by Mr. MAURY.

The WITNESS.—My name is William McLure. I am the son of Mr. Charles D. McLure. I am acquainted with Mr. Rod D. Leggat and have known him about five years. I did have a conversation with Mr. Leggat during the last winter about the properties which you have mentioned here this afternoon, the Ouichita and the Eastern quartz lode mining claims. That conversation took place in St. Louis. It was about the first of March of this year.

Q. How did the conversation arise, and what was said? A. Why, it came up—

Mr. SCALLON.—We object to any statements of

(Testimony of William McLure.)

the defendant, or any part of any conversation as being incompetent, and not the best evidence.

'Objection overruled.

To which ruling of the Court counsel for defendant duly excepted.

Mr. SCALLON.—We object to it further for the reason that any interest in real estate promised to be conveyed must be set out in writing.

A. Why, we had decided, I talked it over with my father about selling the property several times, and about the middle of February, we decided that I would come to Butte and make a sale of the property, and I left St. Louis around the seventh or eighth of March, and it was just prior to that time that I had this conversation with Mr. Leggat. At this conversation I just simply told Mr. Leggat that I was coming to Butte to [85—27] try to make a sale of the Butte property. The properties I was speaking of were the Eastern, the Bland and the Ouichita; those were what I had always spoken of as the Butte properties, and he made no answer in regard to that; at that time my father came into the room and some other question was spoken of and he never made any answer at all. Prior to that time he had said something to me about my father owing him money. That was back in January, 1914, I think, or the year after that first bond expired, it was at that time and he came to him two or three times to get my father to consent to take it up in January, and he asked my father over with him, two or three times. Mr. Leggat knew I was coming to Butte, Montana, to sell

(Testimony of William McLure.)

this property, or to negotiate for the sale of it last March, because I told him so. He didn't make any claim of ownership. There was nothing said about my coming here to represent him in any way. He knew whom I was coming here to represent. That was my father.

Cross-examination by Mr. NOLAN.

The WITNESS.—This conversation occurred in St. Louis, at 822 Security Bldg. It is situated at the corner of Broadway and Low Street. It was in my father's office. It was around the first of March, the exact date I can't give you. I don't think it was as late as the fifth of March, 1915, but it was between the first of March and the eighth of March. I can't recall exactly where I was on the first of March, 1915, but I was at 822 Security Bldg., from 9 o'clock until 12. On the 2d of March, I was at 822 Security Bldg., from 9 o'clock till 2 o'clock. And also on the third day of March and on the 4th and on the 5th and on the 6th and the 7th. Not on the 8th. I left on the 8th of March for Montana from St. Louis. My father was present at this room in the Security Bldg., when [86—28] this conversation was had. It was a small room up on the eighth floor in that building. Just my father, Mr. Leggat and myself were present. At first my father left the room and then returned. So my father did not hear all this conversation, he came in just as it was finished, and that was the reason Mr. Leggat did not make any answer. Mr. Leggat used to come to my father's office about three times a week during last

(Testimony of William McLure.)

winter, during the time he was there. I can't say how often prior to this conversation I have related upon direct examination, how often before that I had seen him in my father's office during the winter of 1915, six times during February, March and the last part of January. I saw him in there in January. I would not say that I saw him in January, but I say I saw him in there six times between the 25th of January and the 8th of March, about six times; I would not say exactly six times. He was in St. Louis from the 25th of January until the 8th of March, and I was in St. Louis at that time. And I saw him at least six times between these dates, inclusive of the conversation I had with him in my father's office in this building. The only person present beside myself and father at one time was Mr. Charles Clark; that was the only time I can remember of him being present. Charles Clark is a cousin of mine, he was present, I think, once. I don't remember of anybody else being present at any of the times I saw him. I don't think I ever stated the time that I had this conversation with Mr. Leggat at my father's office until about a month ago, or sometime since I have come to Montana. I did not tell it, state it to my father between the time I heard Mr. Leggat state it until within last month. I told my father about it within the past month. At the time I saw Mr. Leggat in St. Louis, he was staying with Colonel Butler. I went out to the house to see [87—29] him. He used to walk up to the office, I didn't bring him up there. He did not accompany

(Testimony of Charles D. McLure.)

me to the office, I went out there to see him. I saw him at home three times between the 25th of January and the 8th of March. At nobody's direction. I went out there once at my father's direction, he asked me to go out and see Mr. Leggat, but the other two times I went out there on my own account. I did not go concerning any business, except as to his health. At the conversation that occurred at this particular time that I testified to on direct examination, I told Mr. Leggat that I was coming to Butte to sell the property, and he made no reply, and at that time my father entered the room.

Q. Do you know whether Mr. Leggat had a habit of getting his mail at your father's office in St. Louis? A. Yes.

MR. MAURY.—Did Mr. Leggat get his mail at your father's office in St. Louis?

A. He got some of it there, yes. I can't say how long that had been going on.

(Witness excused.)

[Testimony of Charles D. McLure, for Plaintiff.]

[88—30] CHARLES D. McLURE, plaintiff, being duly sworn in his own behalf, testified as follows:

Direct Examination by Mr. RASCH.

The WITNESS.—My full name is Charles D. McLure. I live in St. Louis, Mo. It has been my place of residence since about 1881. Prior to that time I lived in Montana, from 1864 to 1881. I am past seventy-three. I came here to Montana on about the 4th of July, 1864. I came to Virginia City, Mon-

(Testimony of Charles D. McLure.)

tana. A part of the time I was engaged in freighting and prospecting, and afterwards in mining. I am acquainted with the defendant, Rod D. Leggat.

Q. How long have you known him?

A. It was some time, I think it was in 1867 or 1868, along there somewhere.

I became acquainted with him here in this State, in this Territory as it was at that time, in Helena. I am not sure as to the year or the date, but it was here in Helena. During the time of my acquaintance with Mr. Leggat my relations with him have been very friendly. We were engaged in business together, we were connected in this way: when I would come in here we would meet as merely friends, we would always get together and sometimes we would take dinner together, and sometimes he would go out to the mine above Helena here. I have a mine up above Helena, the first one was over in Scratch Gravel in 1864. Mr. Leggat was not interested with me in that mine. From the standpoint of social relations they had been very intimate. Of course I knew him in Butte after he moved over there and we always met at the hotels and saloons, or wherever we were to come together, and we were always friendly, and he has lived in the same neighborhood, and our friends were mutual. We were engaged in business together, after Granite came up, and I had some [89—31] money. We went into several propositions together. By "Granite" I mean the property at Granite out of which I made my money. The property is located at Philipsburg, Montana.

(Testimony of Charles D. McLure.)

The first enterprise or undertaking that brought us close together, and friendly, was during a strike over in Butte, and I and Mr. Leggat went into the Centennial Hotel—Dr. Beal was keeping it at the time, and took out dinner there, it was the midday meal, and as we were coming out Judge Andrew Davis was sitting there and Mr. Leggat says to the judge, “Mr. McLure does not believe that you got these threatening letters.” That was at the time of the riot, I can’t recall the year, but the judge replied, “Come over to the office and I will show you one over there” and—

Mr. SCALLON.—I object to this as irrelevant and immaterial and as not being responsive.

The WITNESS.—I hear what questions you are asking me, I catch what you say.

The first business I had with him directly was over at Sand Creek, or over at Sappington, Mr. Leggat had been holding the McVey and the Chili claims, two locations. I judge that was in the eighties—about 81 or 82. On this point I talked about the proposition of developing the property and was to build a ten-stamp mill on it and we were to divide the profits—Colonel Hart was interested in it—he was the first superintendent of the Granite—and I spent forty thousand dollars there. I think we continued the operations something like nine months or a year. The operations cost about forty thousand dollars.

Q. How much of that was contributed by Mr. Leggat? A. None of it.

(Testimony of Charles D. McLure.)

[90—32] Mr. SCALLON.—We object to this. It seems to me that they are going entirely too far when they undertake to prove how much was spent on these different ventures, and as indicated by counsel in his opening statement that he would show what the balance against Mr. Leggat was, because that would compel us to go into an accounting of three or four ventures. I think it would be quite sufficient to prove that they were associated together.

The COURT.—I presume this is for the purpose of showing the magnitude of their business ventures. The objection is overruled.

To which ruling of the Court counsel for defendant duly excepted.

A. I spent forty thousand dollars there and it was unprofitable and I threw it up, and at the time I threw it up Mr. Leggat objected to it and brought Colonel Hart out there and he reported on it and I told him that that was as far as I wanted to go.

Mr. Leggat did nothing further in these operations than holding the bond and looking after the accounts; I think he paid them after the money was forwarded from St. Louis.

Q. Did he give all his personal aid and attention to the operations down there?

The COURT.—I think you need not go into the details on that matter.

A. It was simply an arrangement, it was a contract, I could release the contract at any time, it was my fault, it was not his fault, it was the fault of the property and not his.

(Testimony of Charles D. McLure.)

Mr. Leggat had the contract for the work and the spending of the money, always. Mr. Leggat supervised the work and I furnished the money.

[91—33] The next venture, business proposition, was some work we did during that time over in the Cardwell district, in Jefferson County, and I think it cost me something between seven and nine thousand dollars, I don't know which. That was during the slump in silver, or the year after that the work was continued on the Chili and McVey. The amount of money I spent in that venture was something like seven thousand dollars. I myself, only, contributed these funds to the operations. Mr. Leggat looked after the property, attended to the representation and attended to the discoveries, stakes, etc., he looked after that, naturally. It seems to me Mr. Leggat took a man out there by the name of Curry, and he was in charge of the Sand Creek properties, and he hired the men and sent them over there and Mr. Leggat paid them. Mr. Leggat handled the money. Well, that being unfortunate, not profitable, this Cardwell proposition, Mr. Leggat came to me one day and he says, "You own an interest in the Elvina" and he says, "Let's take that up"—and—that is one of the claims that is mentioned in this case here. I had represented the claim and got a quarter interest in it, and Mr. Leggat came to me and he says, "You own an interest in the Elvina" and he says, "Let's do some work on that." I had a quarter interest in it, and then a brother-in-law of mine, Mr. Clark, had another quarter and Mr. Thomas

(Testimony of Charles D. McLure.)

Argyle held another quarter, which he had acquired at some time by representing from Mr. Noyes, Mr. John Noyes. The result was we bought up the outstanding interests in the property for twelve thousand five hundred dollars, every quarter. I bought it up and paid the money to Mr. Leggat, and Mr. Leggat carried on the negotiations with my brother-in-law, yet I paid the money, I think we [92—34] sunk four hundred and thirty feet and I spent ninety thousand dollars on it. When he had to shut down on account of the fall in the price of silver, discontinued, one day I says to Rod, "There is not much chance for any payment back, let's cut the whole thing off and we will divide the properties" and we cleared that up entirely. We operated the Elvina right after the Chili days, continuous, one from the other. When silver went down, of course that made the operations unprofitable, that was somewhere along about the time when the Sherman Act was repealed, in 1896. All of the money was advanced by me. That operation cost me ninety thousand dollars. Mr. Leggat had charge of the operations, in the sense of paying all the bills, keeping up the machinery, hiring the men, and directing the work; he hired a foreman directly upon the work. The money that was advanced for the operation of the mine was entirely advanced by myself. That brings us down now to about 1896. During that time I had also an interest in a mine, in what was called the Eastern, acquired in the same way, it was a quarter interest. That is one of the claims that is mentioned in this

(Testimony of Charles D. McLure.)

case. That is another one of the claims I acquired by representing it for John Noyes in the early days, and the Bland was the same way and the Ouichita was staked by Mr. Argyle and myself, and these properties were bought by me. I bought until I had three-fourths of the Eastern, and I bought out Argyle until I had three-eighths of the Ouichita, and I owned a one-sixth interest in the Bland—we acquired one-third of that, both of us, Argyle and myself, by representing and I still withhold a one-sixth of that. Mr. Leggat and I leased the Eastern claim several times, and Mr. Leggat attended to collecting the royalty, and on the Bland he attended [93—35] to collecting the royalty, and others, and he used to pay such expenses as came along, such as taxes, etc. I think he had an interest in the Eastern at that time, I think he bought out one of the parties. That interest finally resulted in a one-fourth interest.

Q. Is that all you and he did with the Eastern?

A. Of course the property—there was not enough to it—there was one time that Mr. Alexander Leggat wanted to collar it and he made a report on it, and that report was to include several claims then, and they consolidated them and tried to sell stock, and prior to that time we had offered it for sale—there had been many parties come to me and asked for a price on it, and I always said that Mr. Leggat, owning a one-fourth interest in the Eastern, that I would not put a price on it, and never did put a price on it. I always let him do the negotiating; quite a number of them came to me at different times and asked

(Testimony of Charles D. McLure.)

me to sell it, and I told them to go to Mr. Leggat, he has charge of it, and I won't put a price on it, owning a three-quarter interest and he owning a one-fourth, and our friendship had been such that I didn't feel like I would like to make a price on his property. Although I will say this, that if his price didn't suit me, I would have said no.

Q. Can you tell about when it was, and how long these transactions continued with reference to the Eastern?

A. Well, when the Butte & Superior came forward and was in that neighborhood and doing development work, so in that transaction parties approached Mr. Leggat to put a price on it, and the same with the Bland, and again on the Eastern, and the same on the Ouichita, and finally, under these negotiations, there was a proposition made by the Butte and Superior, which Mr. Leggat accepted. That is the date of that paper which [94—36] Mr. Sanders had here, the 1st of July, 1912, is when the deal was consummated.

I am not sure where I was while these negotiations were going on with reference to the Eastern, which finally culminated in a possibility of this deal being made with Wolvin and Hayes. I think when the first negotiations were taken up I was in St. Louis and was told to come to Montana, and I came here before the papers were signed, or about the time that paper was signed, either the day after or the day before it, I don't know which. Prior to this time the negotiations with these people that finally took over the property had been going on for over a

(Testimony of Charles D. McLure.)

year. I think I was kept advised of what was being done. I was kept advised by Mr. Leggat.

Q. Now, Mr. McLure, at this time, when the negotiations were pending, when the deal with the Butte & Superior people was about to be closed, was there any interest in any of the property standing in your mother's name that had to be straightened out?

A. When we came to go through the abstracts on this property, all these interests at one time had been placed in my mother's name, and my mother being dead, and the estate having been administered on—I want to say that there was nothing about these properties that she was interested in at all, and there was no living heirs but myself and my brothers and Mrs. Clark, my sister, and Mrs. Clark claimed an interest in the property. Finally she went to San Diego and my brother assured her that it was all wrong, that my mother didn't own any interest, and she deeded the property back to me.

There was some talk about having an administrator appointed for my mother's estate. Finally we got it [95—37] straightened out by Mrs. Clark making this deed declaring me to be the sole owner of the property, and that deed was sent to Mr. Leggat and put on record. He put it on record and that straightened up the title. It is a fact that an administrator was appointed for my mother's estate. Mr. Leggat was appointed. The deed having been put on record, and no administration they thought to straighten it up that an administrator ought to be appointed and Mr. Leggat was appointed. I be-

(Testimony of Charles D. McLure.)

lieve it was at my request, but it was to straighten out the title, and under the advice of the attorneys that was the best way to straighten it up. It probably was on my written request that Mr. Leggat was appointed; I am not familiar enough with it to say whether that was so or not. I mentioned the Granite property in connection with Mr. Leggat. He was not interested in that. After the deal had been made with the Butte & Superior people, or these two men, Wolvin & Hayes, that was consummated on the 1st day of July, I came to Butte after that. I came to Butte frequently. I was in Butte during the month of August, 1912. I think the option, there was thirty per cent of the total amount of the property bonded by me and Mr. Leggat. The Eastern was bonded for a total of two hundred thousand dollars, of which I had three-fourths, and a one-sixth in the Bland was bonded for thirty thousand dollars that I owned alone, and three-eighths in the Ouichita was bonded for twelve thousand dollars, and I think I got thirty per cent payments, one ten per cent and one twenty. That was all that was done on the contract, and finally they fell down on the last payment. They were all patented claims. My wife and I made a deed to that property and put it in escrow. That was after I had come to Montana, some time in August, [96—38] 1912; when I came here we took up the abstracts and found where the errors were corrected, or found where the errors were and corrected them by appointing an administrator for my

(Testimony of Charles D. McLure.)

mother, and then the deeds were made out for my part of the Eastern.

Mrs. McLure was not well prior to our coming to Montana for the purpose of making a deed and I believe the attorneys wanted a guardian appointed for my wife, and there was a proceeding in the court, Judge Donlan's court, I think, at Butte, and there were parties appointed to appraise the property and report on it. She had no interest in the property except her dower interest, that was all. This proceeding was for the purpose of getting some competent person to make a conveyance of her dower right in the property, she was quite ill at that time. Appraisers were appointed to appraise the value of her interest in the Eastern and the Ouichita. and the Bland. The appraisers were Rod D. Leggat, Dr. Reins and I think Charles S. Warren. They made an appraisal of these properties. I don't remember what they appraised the property at. I can't call it to mind as to the amounts. I can't recall the amount that her interest was appraised at.

Mr. RASCH.—We have here the original appraisal as filed in the District Court of Silver Bow County, and inasmuch as this is the original, we have had made a certified copy here which we would like to substitute for the original.

Mr. SCALLON.—We have no objection to that.

Mr. RASCH.—We will offer this certified copy of the appraisal in evidence and ask that it be made a part of the record and marked Plaintiff's Exhibit "D."

Plaintiff's Exhibit "D" received in evidence without objection, and is as follows:

[Plaintiff's Exhibit "D"—Certified Copy of Appraisement.]

[97—39] *"In the District Court of the Second Judicial District of the State of Montana, in and for the County of Silver Bow.*

In the Matter of the Estate of Mrs. CLARA EDGAR McLURE, an Insane and Mentally Incompetent Person.

INVENTORY AND APPRAISEMENT.

I, John J. Foley, Clerk of the District Court of the Second Judicial District of the State of Montana, do hereby certify that Rod D. Leggat, Charles S. Warren and John P. Reins were duly appointed appraisers of the estate of the above-named ward by order of the said court, duly entered and recorded on the 31st day of July, 1912.

WITNESS my hand and the seal of said court this 31st day of July, 1912.

(Court Seal)

JOHN J. FOLEY,
Clerk.

By M. F. Sullivan,
Deputy Clerk.

The State of Montana,
County of Silver Bow,—ss.

OATH OF APPRAISERS.

Rod D. Leggat, Charles S. Warren and John P. Reins, duly appointed appraisers of the estate of Mrs. Clara Edgar McLure, an insane and mentally

incompetent person, being duly sworn, each for himself says: That he will truly, honestly and impartially appraise the property of said estate, which shall be exhibited to him, according to the best of his knowledge and ability.

ROD D. LEGGAT.

CHARLES S. WARREN.

JOHN P. REINS.

Subscribed and sworn to before me this 31st day of July, 1912.

JOHN L. TEMPLEMAN,

Notary Public for the State of Montana, Residing
at Butte, Montana.

My commission expires August 14, 1914.

[98—40] The State of Montana,
County of Silver Bow,—ss.

OATH OF GUARDIAN.

Charles D. McLure, the Guardian of the Estate of Mrs. Clara Edgar McLure, an insane and mentally incompetent person, being duly sworn, says: That the annexed inventory contains a true statement of all the estate of the said ward which has come to the knowledge and possession of this affiant, and particularly of all money belonging to the said ward, and of all just claims of the said ward against the said affiant.

CHARLES D. McLURE.

Subscribed and sworn to before me this 31st day of July, 1912.

JOHN L. TEMPLEMAN,
Notary Public for the State of Montana, Residing at
Butte, Montana.

My commission expires Aug. 14, 1914.

To compensation for services in appraising said estate.

No charge.

ROD D. LEGGAT.

JOHN P. REINS.

CHARLES S. WARREN.

(Title of Court and Cause.)

INVENTORY AND APPRAISEMENT.

Moneys belong to the said ward, which have come to the hands of the guardian	\$	nil
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Personal property which has come into the hands of the guardian.....		none
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Ward's inchoate right of dower in an undivided three-fourths interest in the Eastern quartz lode mining claim, being Lot No. 169, Sur. No. 1220, Summit Valley Mining District, Silver Bow County, Montana, said claim being unproductive, appraised in the sum of	\$25,000.00
--	-------------

[99—41] Ward inchoate right of dower in an undivided one-sixth interest in the Bland quartz lode mining claim, being lot No. 304, Sur. No. 1140, Summit Valley Mining District, Sil-

(Testimony of Charles D. McLure.)

ver Bow County, Montana, said claim
being unproductive, appraised in the
sum of.....\$12,500.00

Ward's inchoate right of dower in an un-
divided three-eighths interest in the
Ouichita quartz lode mining claim,
being Lot No. 168, Sur. No. 1229,
Summit Valley Mining District, Sil-
ver Bow County, Montana; said claim
being unproductive, appraised in
the sum of..... 2,500.00

We, the undersigned, duly appointed appraisers
of the estate of Mrs. Clara Edgar McLure, hereby
certify that the property mentioned in the foregoing
inventory has been exhibited to us, and that we ap-
praise the same at the sum of forty thousand dol-
lars (\$40,000 no/100).

ROD D. LEGGAT,

Appraiser.

CHARLES S. WARREN,

Appraiser.

JOHN P. REINS,

Appraiser.

Duly certified by John J. Foley, clerk, by J. F.
Driscoll, Deputy.

Filed July 31, 1912. John J. Foley, Clerk. By J.
F. O'Brien, Deputy."

The WITNESS.—I believe I stated with reference
to many of these negotiations and these transactions
between Mr. Leggat and myself when I was away

(Testimony of Charles D. McLure.)

from here, that I was kept advised by Mr. Leggat. I was kept advised by letters, correspondence, and sometimes by telephone, if I was in the country. I am familiar with Mr. Leggat's handwriting.

Q. I will ask you to look at this letter, dated "Butte City, Montana, April 2nd, 1889" and addressed to you at St. Louis, and I will get you to state in whose handwriting that is.

A. That is in Mr. Leggat's handwriting.

[100—42] Mr. RASCH.—I will offer this letter in evidence and ask that it be marked Plaintiff's Exhibit "E."

Letter received in evidence, without objection, and is as follows:

"Butte City, Mont., April 2d, 1889.

Chas. D. McLure, Esq.,

St. Louis, Mo.

My dear Sir:

You will please find herewith a lease on the Eastern Lode claim. On looking over it you will find that it fills the bill, as we agreed on while you were here.

Please sign it at your earliest convenience and return to me, as the parties have their machinery all ready to commence operations. I feel assured that they will develop the mine into a paying one.

Hoping to hear from you soon, I am

Yours truly,

ROD D. LEGGAT."

Q. I call your attention, Mr. McLure, to a letter dated Butte, Montana, February 2, 1905, addressed

(Testimony of Charles D. McLure.)

to you at St. Louis, and I will get you to tell us in whose handwriting that letter is.

A. That letter is signed by Rod D. Leggat and is in Mr. Leggat's handwriting.

Letter marked Plaintiff's Exhibit "F" and offered and received in evidence without objection and is as follows:

"Butte, Montana, Feb. 2, 1905.

Mr. C. D. McLure,

St. Louis, Mo.

My dear friend:

Yours of the 27th of Dec. came duly to hand, and I assure you I was glad to hear from you.

[101—43] I have been waiting to see what I could do in the way of leasing the Eastern and Elvina on the first. I have given a verbal lease to a couple of good men to prospect on the west end of the 'Eastern' and if they find¹ anything I agree to give them a written lease for a year 25% royalty. There has never been anything found on the west-end of the claim, the soil being deep, but the men are tracing the vein very nicely and I do hope they get it good.

As to the Elvina most of the leasors are afraid of the water for it will take some capital to handle it and most of them lack that. There is a party that I am figuring with that has the means to handle it in good shape, but he knows nothing about mining himself. But if he goes into it he would want a bond on the property. This I told him would rest

with you. 'And that McLure was a hard proposition to either buy from or get a bond on anything he owned.'

I offered him a one or two year lease 25% royalty, shaft to be sunk additional 159 ft. 1st year, 75 ft. 1st six months in the 2d year or if the shaft was sunk 150 ft. the 1st year he would make the royalty 20%. I also offered to furnish the hoist, pumps and boilers, as you told me you had them over at Philipsburg, and I could be there. Really it will take pretty strong party to handle it for the water is very heavy in that section and they would have to pump all by themselves, for no other pumping is being done. It may fall through, but by making good inducements to him something might be done. Now, as to the bond they naturally would want one, so set what you think is the right figure, as well as any other stipulations or suggestions that you may wish done.

Hoping to hear from you soon and with best regards to you and yours, I am

Truly,

ROD D. LEGGAT."

[102—44] At this point plaintiff offered in evidence the following correspondence, which was testified by the witness, was in the handwriting and signed by the defendant Rod D. Leggat, and marked as exhibits and received in evidence without objection:

[Plaintiff's Exhibit "G"—Letter, Rod D. Leggat to
C. D. McLure, April 19, 1905.]

"Butte, Montana, April 19, 1905.

Mr. C. D. McLure,
St Louis, Mo.

My dear Charlie:

There is a party here who is trying to get the following group of claims: 'Bland, Eastern, Deadwood, Jersey Blue,' and one or two other claims in that vicinity. They have got some of them bonded already and want the 'Eastern.' I told them I was willing to bond but would have to write you as to the amount that we would want for the property and it would have to be a short bond at that. So please let me know what figure you think we ought to ask for the Eastern claim. Now please don't neglect or postpone telling me what to do in regard to this matter, for I promised to give them our terms as soon as I hear from you.

I wrote to you as to the Elvina but never got an answer. I have offered good inducements to several lessees but they are all afraid of the water.

So do it now, for I do *live* to hear from you, even if it is only a telegram.

With very best wishes, I am, as ever

Truly yours,

ROD D. LEGGAT."

[Plaintiff's Exhibit "H"—Letter, Rod D. Leggat to
C. D. McLure, May 2, 1905.]

[103—45] "Butte Mont. May, 2, 1905.

Mr. C. D. McLure,
St. Louis, Mo.

My dear Friend:

Yours of the 24 to hand and I see that you don't give me any explicit instructions as to what terms we ought to bond and lease the Eastern on.

The parties are willing to bond and lease for one year, 1st three months to keep at least 2 men sinking shaft. Not less than 24 days in each month. End of three months not less than four men sinking shaft for the same period (24 days each month). At the end of six months will pay 10% ten per cent on the amount of bond. All ore to remain on dump until the ten per cent is paid. Deeds to be placed in escrow at any bank you name and payment credited to the different interested parties or owners by the bank. Of course I can have put in any other safeguard or stipulation that you wish. I have not even intimated at what figure we held the claim at to them, but said that I would consult Mr. C. D. McLure of St. Louis and he was a tough one to buy from. Quick to buy but slow to sell.

My impression is that you own 1/2 interest in Eastern, T. Stewart White and myself the other half, still I am not sure. My deeds are in bank vault. Will look it up. You should have abstract, for years ago I sent you one.

I think sixty thousand to seventy-five would be about right for I would like to take now for my interest at the rate of 25 or 30,000 per claim.

As to what your interest is in the Bland, I think it [104—46] is a one-fourth. Warren and Curtis is also interested *in with* you. I had merely stated to the parties that you owned in that claim as we passed over it, but nothing further has been done, as they are looking farther east and have left out the Jersey Blue. There is no work being done in the vicinity. The nearest is at the Black Rock south-east of the Eastern.

As the parties want to go east to see what they can do, I wish you would give me the figures that we ought to put on the Eastern. Please telegraph the amount and any stipulation that you want, for I don't want to lose an opportunity to have some work done and possibly a deal.

So expecting to hear from you at your earliest, with regards and best wishes,

I am truly,

ROD D. LEGGET."

[Plaintiff's Exhibit "I"—Letter, Rod D. Leggat to
C. D. McLure, June 9, 1905.]

"Butte, Montana, Jun. 9, 1905.

Mr. C. D. McLure,

St Louis, Mo.

My dear Friend:

You will please find proxy for the Combination Mining and Milling Co. meeting which I signed.

As to the Eastern claim will say that I think it is

for a new Co. that the promoters are figuring to get interested. The Alice Mining Co. has nothing to do with it. The Quilp Enterprise Narrow Gauge 'Deadwood and Damarat' have been bonded to the parties that want the Eastern. The price on those different claims running from 40,000.00 to 75,000.00. I put the price on Eastern at 110,000.00 ten per cent to be paid in six months, bal. in one year.

In looking over the records I find they show as follows as to the interest.

[105—47]	C. D. McLure	7/12
	Margaret McLure	1/6
	R. D. Leggat	1/8
	T. Stewart White	1/8

I am getting an abstract out but the interest stands as above. So you had better look up the deed from your mother for I think you once told me she had deeded to you. For this interest is now in bad shape and we can do nothing as to making the deal until I hear from you. Hoping that you will attend to this matter as well as giving me any further instructions as to what you want in the agreement, provided I can now make one, so that one-sixth interest should be straightened out at once.

Please let me know about what time you will be out for I may have to go to Idaho, but I will not go until you come.

You have some stock in the Combination M. & M. Co. that should be transferred to me.

L. M. Foster died at Los Angeles, Cal., yesterday,

result of stroke of apoplexy. Very sudden. Buried on Thursday.

Hoping you are well and that you will write soon,
I am as ever

ROD D. LEGGAT."

**[Plaintiff's Exhibit "J"—Letter, Rod D. Leggat to
Charles D. McLure, January 15, 1906.]**

"Butte, Montana, Jany. 15, 1906.

Mr. Charles D. McLure,
St. Louis, Mo.

My dear Charlie:

I have leased the Elvina Lode claim for the term of two years on the following conditions: 25% royalty to lessor. No ore to be removed from dump without getting consent of lessor. The lessees are to take the water out and put the mine in good shape. In four months from date are to commence to sink the [106—48] shaft 150 deeper and keep at the said sinking continuously until completed. Shaft to be the same size and dimension as the present shafts.

In fact I have drawn up an "Iron Clad" lease. The parties want also a bond. This I promised them, but said I would have to consult with you as to the figures. They are very anxious to get right to work and it will take some time for them to get their machinery in place, and I know getting the water out of the mine is a big undertaking.

In your last you expected to leave for Idaho so have not much hope of this reaching you, but thought I would try it.

Will write by this mail to Jesse B. to find out

where you are and if you will come here ere long, for I long to see you.

Yours very truly,

ROD D. LEGGAT."

[Plaintiff's Exhibit "K"—Letter, Rod D. Leggat to
"Charlie," February 4, 1906.]

"Butte, Montana, Feb. 4, 1906.

My dear Charlie:

Your photograph came in splendid condition this evening, and we are all very much pleased to get it. Wife and Stewart wants it framed right off, so I expect it will be placed in the most conspicuous position in the house. It really is a very good one of you and resembles very much the last 'Lord Provost' of Edenboro, that I had the honor of meeting, so there. I met Warren today, said he wanted your address, which I gave him. He then said he could sell the "Bland" lode claim for \$100,000 and get all the money down in 30 days, so if he wasn't lying you should get a letter with this mail from him, for he talks of [107—49] millions now as I do of pennies. The boys have got their 40 H. P. boiler to the Elvina (blk. smith) and they are expected home in about ten days. The Largey estate mining expert, Mr. McHugh, asked me yesterday if Mc C. White had a bond on the Eastern and told him no, but that he wanted it and I had only a short time ago got you to consent to terms, had written McC that I could not hold you long for other parties were after it from you. He wanted me to make the bond right out and get you to sign it for they wanted it. This shows to me that Largey & White is together in a syndicate.

Told him I had given McC the terms which would be held good until I heard from him, after that I could not answer for you. So you see I put the whole responsibility on C. D. Mc. Hope you will stand it. Got a letter from J. A. Coram from Waldorf-Astoria, New York, head of American Consolidated Coffee Co., begging me to give him more time on a big lumber proposition that is before him. I wired him to-day that he would have to put up 10,000 before the 15th of this month, and I would hold the offer to the 1st of May for him. The proposition is a very important thing for his Co. and he knows it. Rather think I will go a deal.

Hoping you are in the best of health and easy in mind, I am,

Truly,

ROD D. LEGGAT."

[Plaintiff's Exhibit "L"—Letter, Rod D. Leggat to C. D. McLure, March 30, 1906.]

[108—50] "Butte, Montana, Mar. 30th, 1906.

Mr. C. D. McLure,

St. Louis, Mo.

My dear Charlie:

I ordered abstract to be made of Ouichita Lode claim and Mr. Simmons, the abstractor, of the Amalgamated Co. will send it to you as soon as it is finished. I got the interests from him and the title stands as follows:

Chas. D. McLure, 6/16

P. M. O'Donnell, 3/16

Silas T. King 4/16

and Sweeny 3/16

16/16

I have to start for Idaho to-night, so drop this to you as I don't know when I will be back here.

It looks as if those parties that want your claim are in earnest as they told me they had reported favorably after I went over the different claims with them. I do hope that favorable deals can be made with them.

Mr. Haynes told me that it was with a banker at Boston who had a syndicate that was ready to put up on a group of *of* claims on a favorable report from Mr. People, who is the chief assayer of the Amalgamated. Peoples is from Denver and Colorado School of Mines. They will write you.

A Mr. Andrew Quiltz, who was the foreman for Millard at Virginia and an old miner here, came to see me to see if you would give a lease on your Ipox claim at Virginia. Thinks he could make it pay. He now is working on a lease here. He is a good miner. I told him I would write you. He might be useful to you, so write me or to him. Quiltz, care of Joseph Carney, c/o County Treasury Office, Butte, Mont.

With best wishes and hoping for a sure, good, quick deal, [109—51] I am truly yours,

ROD D. LEGGAT."

**[Plaintiff's Exhibit "M"—Letter, Rod D. Leggat to
"Good Old Friend," July 16, 1906.]**

"Butte, Montana, July 16, 1906.

My dear Good Old Friend:

Got your short note today and was very much pleased to hear from you. Glad that you are thinking of bringing some of the 'Clan McLure' with you,

for their ancestors always thrived in the 'Hieland' and it is the place of freedom for them.

Please let me know about what time you will be here, for I may have to make a short trip to Idaho, but don't want to miss you and the boys, so will await word from you. I am in splendid condition and do hope you are likewise.

With best love and wishes

I am as ever,

ROD D. LEGGAT."

[Plaintiff's Exhibit "N"—Letter, Rod D. Leggat to Charles D. McLure, November 29, 1906.]

"Butte, Montana, Nov. 29, 1906.

Mr. Charles D. McLure,
St. Louis, Mo.

My dear Friend:

Yours of the 26th just reached me this 'Thanksgiving' noon day. Am glad that you reached home without any accident, even if you were several hours late. Mr. Wilmot and myself went all over the Eastern, Bland, Ouichita, as well as over the Ready Cash of Driscols. He seemed rather pleased with the group and outlook. I gave him the figures of all the interests you held and also got Dennis Driscol's figures [110—52] on the 'Ready Cash,' which he wanted me to get for him, and would report to Mr. Channing and the Lewisohns at once. He told me that a party had tied up a group of claims north of the Pollock and south of the Colleen Bawn and had gone to New York to place them before the company there. On going over our group to the different offerings I saw that he had been to some of them be-

fore, and not knowing the corner, missed important points, which he admitted he had. I gave him no option or time, but told him your terms as we agreed on. Did not have time to go to the Elvina that day, but he spoke of it, and told him of Col. Hart and Adams report, which he is very anxious to see, for wanted to know if we would give him time to pump the water out and time to inspect the workings.

So please send Hart & Adams report on the Elvina at once. I rather thought you would have sent it as soon as you got to your office, as you said you would send it as soon as you got it.

I will keep you advised of anything that comes up either by wire or letter.

People have went wild on the Barnes-King stocks. (See papers.)

My wife is still pretty bad. Is some better since you left, for I am at home nights now.

Sam Houser's wife dropped dead in California Tuesday last.

With best wishes and regards, I am truly

ROD D. LEGGAT."

[Plaintiff's Exhibit "O"—Letter, Rod D. Leggat to
C. D. McLure.]

[111—53] "Mr. C. D. McLure,

St. Louis, Mo.

My dear Charlie:

I have been looking for you and the boys here ever since the middle of last month. Why don't you come, for I want so much to see you, for it does me lots of good to see your jolly large provost figure around.

I enclose copy of letter from a mining engineer just received from a new camp in Nevada. I have written him for further information and may go. Can you make the trip with me? Only 25 miles from R. R.

Hoping to hear from you at once

I am truly yours,

ROD D. LEGGAT."

Enclosure.

[Plaintiff's Exhibit "P"—Letter, Rod D. Leggat to
"My Dear Friend," June 7, 1907.]

"Butte, Montana, June 7, 1907.

My dear Friend:

I just got yours of the 4th so will drop you a line and get it in mail on to-night's train and it will reach you by the 10th.

I will go to Great Falls on the morning train on Monday, the 10th, so as to be there sure on the 11th.

I thought that Will Parkinson might come this way so we could go together. I will keep a lookout for him.

I thoroughly understand the situation, and how Ford, and I guess others, have tried to steal and do you wrong. I've got no use for a faithless or ungrateful wretch of a man, and what I can do to make them do square and straight in all things shall be done by me. I presume you have written to your [112—54] confidential friend there, so I will not be at Sea. Will say that all of this matter is strictly confidential with me and no one knows that I am going on the trip. Wire me at the Falls if necessary.

I will wire you with this so you will know that I will be there.

With best regards and wishes,

I am as every truly,

ROD D. LEGGAT."

**[Plaintiff's Exhibit "Q"—Letter, Rod D. Leggat to
"Charlie," October 15, 1907.]**

"Butte, Montana, Oct. 15, 1907.

My dear true old friend Charlie:

I got your telegram and things are all right. A short time ago Genl. Warren hailed me on the street and showed a telegram from you as follows: 'A leopard can change its spots but I cannot. See Rod D. Leggat. Signed C. D. McL.' Well it was a burner, but he deserved it for he long knew what your figures were and agreed to it with me, and the next day gave a bond to an irresponsible party for his 1/2 interest at the rate for full claim for 100,000 and then did not tell me. To-day I told him your price was 150,000.00 and he had long been aware of that fact for McLure did not change like a chameleon.

He wrote to Argyle, but he will stand at your figure. Will at least communicate with me, so feel easy. You are a holdfast, good and true. Good Scotch blood in one's veins tells of the stock they spring from.

Things are quiet here as your letter anticipated. You really struck them correct, and I fully agree with you that shot guns should be in order, but a better treatment would [113—55] be like the Sepoy strapped to the cannon's mouth by British in India.

I do hope self and family are now in good health. Is there any hope of you coming out this year? Let me know.

Yours truly,

ROD D. LEGGAT."

[Plaintiff's Exhibit "R"—Letter, Rod D. Leggat to
C. D. McLure, October 18, 1907.]

"Butte, Montana, Oct. 18, 1907.

Mr. C. D. McLure,

St. Louis, Mo.

My dear Charlie:

Yours of the 14 and 15 to hand and I will say that in the main you sized things up correctly, or I think you do. I saw Warren to-day, previous to receiving your letters. He had just got your letter which he handed me to read. He also had a telegram from J. T. Argyle to him stating that he, Argyle, would agree to the price offered for the Bland. So Argyle is willing to sell at that figure. While here he agreed to the 150,000 figure, for I took him up to the claim, so he's just gone back on his agreement, that's all. Now in yours of the 14 you leave it to my judgment to sell and let them develop the Bland. Now Charlie, this rather puts me in a position of an adviser as to what you should do with your own. Your interest in the Bland is 2/12. As Argyle wants to sell as well as Warren, why not do it, for as things look here at present I consider it a big price. To tell you what I really believe, I don't think that this fellow Nickry or his Co. can pay 80,000 in sixty or two hundred days. In my opinion it is just bosh for things here are extremely gloomy and will continue

so for a long while. Remember that a 'half loaf is [114—56] better than no bread.'

The State Savings Bank did not open their doors yesterday, and to-day the State Examiner has possession. I think the bank is solvent, but it is rather hard to get caught with only a few dollars, as pocket money, really just a five, and not knowing when I can get any more, so you see that I am not over happy or of a sweet disposition at the present time. Just think of over 4,000,000.00 in deposits being tied up for God knows how long. If I had five hundred in the house I would be happy just at this—but enough of my cares and worries.

I really think if there could be a legitimate sale of your interest in Bland, I advise you to let go.

Hoping that you are feeling much better than I am,

I am truly,

ROD D. LEGGAT."

[Plaintiff's Exhibit "S"—Letter, Rod D. Leggat to "Charlie" October 24, 1907.]

"Butte, Montana, Oct. 24, 1907.

My Dear Good True Charlie:

I have received your many good letters, also the clippings and many thanks for the same. When I say that I have deeply considered and acted on them as far as I could, you really and truly hit the situation, for now the fates have proved your warning made a long while ago. The Barnes-King robbery or stealing did not affect me one dollar, only through some of my friends whom I am extremely sorry for. My opinion is that there will be no expose, for those who could and wish to do the investigating do not do

it for others have a string on them and they can't move. As to the Ross Tweed & Clipper deal, will say that Walter Harvey Weed had not a thing to do with it, and to my certain knowledge it was Will [115—57] Word, John Gillie, W. S. Thornton, Jim Forbis and John Berkins. This I got at the time direct from Billy Morris, and the amount he had to give up to each.

In my last I stated that I thought the State Savings Bank was solvent, but there has always been a banking enviousness or jealousy from other banks here towards it, and no straight out Amalgamated firm or man ever talked friendly for it. It would be like this. It would be like this. 'Well I hope so,' but then a doubt, so a poor depositor would be in despair.

Tell you the truth, I have no use for a sneek or wishy washy man, or one that wants to crowd the the under dog. I guess you and I are alike in that. A square deal and for the weak always, if they are right. Nothing have I heard from Warren's man Nickey, so I guess you put it up right.

Hoping to hear from you often and with best wishes,

I am truly

ROD D. LEGGAT.

Is St. Louis affected by the troubles in New York?
I hope not."

[Plaintiff's Exhibit "T"—Letter, Rod D. Leggat to
C. D. McLure, May 7, 1908.]

"Butte, Montana, May 7th, 1908.

Mr. C. D. McLure,
St Louis, Mo.

My dear Charlie:

I got back from Idaho a few days ago. Won my suit at Lewiston to quiet title and partition of property (group of six quartz claims). I commenced this suit on your advice so you have my thanks for the solid advice you gave me.

I just got a letter from my nephew Alexander Leggat [116—58] who is in Ohio, and have written him to return by the way of St Louis to call on you so you can consult together concerning the Eastern, Ottawa, Deadwood and other claims that we can get together into a group. He will have maps and plats and knows every foot of those claims and that section of the camp and has all the dates to give you, we have to have an engineer or one to plat or map these properties who has a good head as well as having a good claim himself. That will help to make a fine group for some live man or men to handle. Dennis Driscoll will join us with the Ready Cash claim and we can get the Meighan in. Well, just sift the boy thoroughly both inside and out and then decide on what we shall or will be willing to do. I believe in the grouping of these claims and to do it now.

Mr. Fusz told me that Mrs. McLure was in bad health, which I am extremely sorry to hear. I do

hope that ere this she has improved for I know her illness is a great strain on you.

Hoping to hear from you soon and with best wishes and love,

I am very truly yours,

ROD D. LEGGAT''

[**Plaintiff's Exhibit "U"—Letter, Rod D. Leggat to C. D. McLure, January 29, 1908.**]

"Butte, Montana, Jany. 29, 1908.

Mr. C. D. McLure,

St Louis, Mo.

My dear Charlie:

You will find herein map of the North Butte Camp. All of the claims marked in red might be tied up, but action must be quick.

[117—59] You will also find preliminary report of Mr. Leggat, who for the last two years has been extremely familiar with the above section. I hurry to get this off, for in yours of the 25 you wanted some data, but when you remember that 20 years ago it was the custom of 'High Graders' to go for everything in sight, both ore and stripping all the timber off of one's claims. So if there is any prospect of floating our prospects let me know, for I don't want to bind anyone up unless there is reasonable chance of a deal honestly carried out.

You now have the maps and you know the section as well as any man. In fact much better.

Hoping to hear from you soon, for your two last letters lead me to believe that you see the oppor-

tunity of this great property.

Yours truly,

ROD D. LEGGAT.

“Butte, Montana, 5/6 1906.

Send clipping enclosed herein.”

**[Plaintiff's Exhibit “V”—Letter Rod D. Leggat to
C. D. McLure—July 6, 1906.]**

Mr. C. D. McLure,

St Louis, Mo.

My dear Charlie:

I got here on night of the 3d. since which time I have been very busy attending to some matters that needed my attention as well as paying some attention to *Mr.* Leggat, for she has really been a very sick woman and is not well yet, but is much better than she had been for the last month.

Your letters have been received and I strictly obeyed instructions therein concerning the Eastern talked of deal. Met Mr. Riley and told him that I met Mr. Haines on street, but [118—60] did not talk deal, for your letter had posted me ere I met him. Did not see him since until I met him at Post Office today. He told me he looked for his people here either to-night or to-morrow night, for they were to leave Boston Wednesday last. Still he did not know that positively as he had not heard direct from them himself, so you see that any deal is really very uncertain, for I for one can't learn their names or financial position. You state that they have paid cash for some interest and have stocked and are underwritten by strong parties. I rather doubt this,

for I surely would get on to this if it was a fact. The consolidation that my nephew Alexander showed you the plat of has fallen down on account of two many interests to handle. This I know and Dr. Reins, who owns heavily in the Deadwood, has given a verbal offer to Mr. Haines for his interest in "Deadwood" as well as J. F. Forbis on the 'Mamie' and P. J. Brophy on the 'Woodin.' Haines told this to me at Post Office to-day. I haven't got much faith in any deal being made, but you can rest assured I will be in full accord with what you do and will not interfere in the transaction, only I put the figure at 200,000 to these parties with your sanction and would not like to have it put higher, for I like to have my promises kept better than my bond.

As I leave for Idaho night of the 7th, provided my wife is in condition for me to go, if the Boston parties come I will not see them unless it is absolutely necessary and they send for me. Then I shall give the figure we ask for the property and refer all details on consummation of the deal to you alone 'for sometimes too many cooks spoil the broth.' Whatever you do suits me and I can answer for T. Stewart White, for it is right when many are included for one to do the business.

[119—61]. I received the within letter to-day, which speaks for itself (attempt to graft) so called on the attorney to see what it meant. He stated that Weller claimed that you had refused as well as myself to give a written consent to assign the lease to Spokane parties as well as misrepresenting the

property. I wrote my friend Loodsy feels that the leasee never lived up to a single stipulation in the least and that Mr. Dixon same to my house and gave up the property and said that he would get the papers and surrender them, as he could not get any one with capital to back them and had gone himself to work on the Ophir claim. I did not tell any too much as this fellow Weller is impecunious and has no fee to pay a lawyer, only a contingent one of black money. I don't think any reputable attorney will take it up, even if any one did nothing can come of it only to annoy us a little.

As to my Alaska troubles will say that after my attorneys went all over papers I have they counsel that I tie up escrow deeds and contract in bank, for I am entitled to one-half without a question of the escrow; really should have two-thirds of it, so it may be that I will have to go to Oregon to commence suit, which I don't want to do. As I have plenty of time to do it will consider it for a while. If anything comes up to-morrow before I leave will let you know.

With best regards

I am truly

ROD D. LEGGAT.

I have an abstract of title to the Elvina which you can have at any time."

[Plaintiff's Exhibit "W"—Letter, Rod D. Leggat to
"Charlie," January 5, 1906.]

[120—62] "Butte, Montana, Jany. 5, 1906.

My dear Charlie:

Yours of the 2d with the New Years Greetings is to hand. I assure you that I sincerely appreciate the knowledge that you sometimes think of your old friend, which I do often of mine.

Wallace Mc C. White left for New York last night. He wanted to bond the Eastern claim and in four months pay 10% of the bond, bal. in a year. I put the figure at two hundred thousand doll. (200,000.00) provided you were willing, but as you are at times so uncertain I did not dare to bind myself. He wanted, if possible, for me to get the bond at that figure and send it to his address in New York at once. He is a bright, smart fellow and I think means business, so it is up to you.

There is no development in that vicinity at present. On the 'Berlin' or the 'Old Bow K' group they are still sinking, but are not on the ledge yet.

The town is wild on the copper stocks and any old thing will sell that is stocked. The Raven is now selling at 6.50. Could buy last week at 1 and 1.50 (Raven and Snoozer claims at Centerville).

Now as you are going to the Stanley Basin section, take my advice and go prepared for a rough trip, for I have been there. I really am afraid to have two old fissils make the trip alone. Got a good

mine to see you and see that you get through all right.

Let me know when you will be here. Also when Mr. Frusy will be out. Hoping to see you soon and that the New Year will be a happy and most prosperous one for you and yours,

Sincerely yours,

ROD D. LEGGAT.

[Plaintiff's Exhibit "X"—Letter, Rod D. Leggatt to
C. D. McLure, February 22, 1906.]

[121—63] "Butte, Montana, Feb, 22d, 1906.

Mr. C. D. McLure,

St Louis, Mo.

My dear Charlie:

Yours of the 17th recd. and a mighty good summing up of the situation here it is. You are right in the main drive, but off your base as to the future as to Heinze. Am satisfied that Hodgens, Largey, Mc C. White Syndicate with Heinze will make a combination with Coram American Copper Co., which would be a great consolidation. I got letter from J. A. Coram dated at Boston and he will be here Monday next. I have got a big lumber or timber situation ties up and he wants it bad for *his* Co. and frankly wired as well as wrote me, so you want to remember that I always have one alley that I don't get down it.'

Have not heard a word from *Mc White* since I wrote him, nor have any of those that are connected with him closely. Will write him to-night so that we can be at liberty to deal with other parties.

I was up to the Elvina this morning. They have a good boiler and hoist up and have been tanking water out. They are running 3, 8 hour shifts. Started up Monday tanking water. Have got the water down just to the roof of the 100 level. Tank hold 350 galls. and the whole outfit is good. They want to clean out and see how the 100 level looks. I think by Sunday that I will be able to examine it myself. They have got the boiler and hoist enclosed, but will not enclose the shaft or frame, as they all now here leave shaft in the open.

'Old Tom' was here for four or five days. Was very mysterious and secretive, but like all his doings I could see his 'tracks' for ten miles. After some claims just north of [122—64] the 'Columbia Gardins' and at last had to come to me to get proper information. He told me he would be back from Helena in a few days. I don't know who he is acting for, but I hope on this matter not for you. Strange fellow. Never knew him to get a single claim individually, but always had to have someone behind him. Not a leader but a follower. Send clipping enclosed. A party by the name of J. O. Cooper, heavy weight, is here wanting to get further time on a bond on a group of copper claims that I own, individually, near Atlin, B. C. He brought some very nice copper ore and it looks as if sometime in the future I might be able to rub elbows with Big Bugs. I never saw this property, so I guess I will have to take a trip up there this summer. It is about 40 miles from the Conrad, that I am interested in and told you about. Can't you arrange to take the trip

with me. All or most of it is by water and an elegant trip.

Hoping to receive more of your good, sound letters,
I am most sincerely yours,

ROD D. LEGGAT.

Did you find Adams and Harts report on the Elvina? You told Dixon you would send it. They have asked me several times, so if you have got it, send it to me."

[Plaintiff's Exhibit "Y"—Letter, Rod D. Leggat to "Charlie," March 3, 1908.]

"Butte, Montana, Mar. 3d, 1908.

My dear Charlie:

Wrote you last night and got yours of the 29th. Am extremely glad to know that you got deed from the U. S. Marshall for the Diamond R. property, for you only fought for what was just and your due. Don't worry as to Ford, for he would beat a saint without any compunction of conscience.

[123—65] It seems strange that you should take such a Scottish name as 'Benvenue' for your Co., for this high mountain looked down from the south on 'Loch Katrine' the home of the 'Lady of the Lake,' one of Sir Walter Scott's poems, and I am 'Roderick Dhu.' Just read Scott again and you will see I am right.

I enclose clipping so you will see that the right won.

With best love, I am truly,

ROD D. LEGGAT."

[Plaintiff's Exhibit "Z"—Letter, Rod D. Leggat to
C. D. McLure, December 9, 1906.]

"Butte, Montana, Dec. 9th, 1906.

Mr. C. D. McLure,
St. Louis, Mo.

My dear Friend:

Yours of the 3d and 5th to hand. As to the proposition of the Elvina and boiler that you would furnish for the purpose of unwatering the mine, I made the proposition to Mr. Wilmot; also showed him J. C Adams report. He looks favorable as to it, but he is waiting for orders to go to New York to consult with Channing and his Co. people. He took down notes of all the information that I gave him. I guaranteed with a good pump and tank he could unwater the mine in two weeks, which can be done. He had reported on the Eastern group but got a wire to arrange to leave for New York about the 15th or on further instructions, which he looks for daily.

I would like awfully well if we could get such a strong reliable company as the Lewisohn Assn. to take hold of either properties. Wilmot has taken a lease from the South Butte Mining Co., which means the Great Northern R. R., on what is called the Jones Placer and is sinking a shaft a little west [124—66] of the Parrot Smelter and already has his machinery up and in place. Be a pusher and if we can make a trade with him there will be no delay in him getting at work quickly.

He will put both Eastern and Elvina properties up

to his people in person. He says that he will not be in New York over three days. I do wish that a deal could be made with the right people. There are plenty of men that Micawber like are looking for something to 'turn to' who want to tie the Eastern up, but we want none of these. Therefore at times I think we may be too exacting on terms.

I got a wire from P. A. F. in answer to one I sent you, authorizing me to raise the bid on Deadwood 1/6 interest, which I done yesterday morning, to fifteen hundred. This was a raise of 50%. The law is a raise of, or in writing bid of, 10% over the bid made at sale of property has to be considered by Probate Court. Sometimes it *does cover* the expense of a new sale and is not considered by court. So to make it more binding I put it high enough. Court can either confirm my bid or order a new sale now. Certainly next court will decide.

As to the Monticello Hotel, I will see what I can do in getting a buyer. I wish you would let me know how many rooms and stores it contains or No. of rooms, buffet and back rooms each compartment contains. Or have you a plan of the different stores, which would be better to send me, as well as the frontage and depth of building.

Am really glad that you are willing to sell this property, for it has been a 'White Elephant' on your hands for years. Not even a small interest on the investment to you. All ate up in taxes and pretended improvements. Why, as my wife tells me at times, I am an Easy Mark. I guess there are others.

[125—67] I will keep you advised of anything

that will be to your advantage, and hoping to hear often from you,

I am truly,

ROD D. LEGGAT.

Quite a number of the new members of the Legislature tell me that the Monticello is full for they have tried to get apartments there. L. A. Walker of the Finlen Hotel tried to get apartments there for wife, daughter and self weeks ago, but could not."

[Plaintiff's Exhibit 1—Letter, Rod D. Leggat to C. D. McLure, August 24, 1909.]

"Butte, Montana, Aug. 24, 1909.

Mr. C. D. McLure,

St. Louis, Mo.

My dear Old Time Friend:

Your letter of the 16th came some time ago, but I had to make a trip to Cataract district to look over a group I have there, so delayed writing. I enclose letter that I received from Colorado Springs, which I could not answer for the reason that I never heard a word from you in reply to a wire as well as a letter concerning the proposition and kept silent.

As to the talk James Breen had with me concerning purchasing Dyke property of yours, he stated he would give 100,000.00 dollars for it at 18 months time. I told him that I did not think you would entertain such a proposition, but I thought if he went to St. Louis and saw you in person and meant business that a deal could be made on reasonable terms. I did not think much of the conversation at the time, and only thought of it just as Mr. Frusy got into a carriage to

take a train, and then told him to tell you I meant no harm. I [126—68] learn that the Largeys as well as Heinze and Breen are interested in that section. I am inclined to believe that Heinze will come out all to the good in the long run, for he is resourceful and a fighter. 'Dog eat dog,' but my sympathy is always with the under dog in the fight. Can't help it. It's born in me.

I do wish that you would send your boys out here to me to spend their vacation, for I would have had Stewart and them go with me camping, and have gone and shown them all of your properties in Montana, which I think they should see and know of. It would have done them lots of good and Park is now old enough to relieve you of many a care if you only give him a chance. So next year send them out here to me.

The Butte and Superior as well as the Elm Orlu are still sinking and both look well. There is no doubt of them both being great mines. No other developments are being made in that section at present.

The Colorado is a big mine. It belongs to the Davis Daly Co. and that stock will go up sure.

I look for a party of my old friends who are now in Oregon and Washington looking over their timber holdings to meet me at Spokane or Lewiston, from where I will take them into the Clearwater country in Idaho just to give them a rough trip. Would just like to have you along so you could get a good whiff of mountain free air.

My wife and Stewart joins with me in best regards,

Yours very truly,

ROD D. LEGGAT."

**[Plaintiff's Exhibit 2—Letter, Rod D. Leggat, to
C. D. McLure, July 6, 1909.]**

[127—69] "Butte, Montana, July 6, 1909.

Mr. C. D. McLure,

St. Louis, Mo.

My dear Charlie:

On my return from Idaho (where I had been with a surveyor to survey a group of quartz claims for patents for over two weeks) I found yours of the 29th, which I was extremely glad to get, for your copy of letter to him (Alex) expressed my views exactly. He had written to me at Elk City wanting me to wire you at once to sanction a deal with parties that we know nothing of. All of which I did not do. It's all right to act quick and with despatch with parties of standing that you know, but not with boomers or middlemen. The old Scotch adage is good for then just 'bide your time' which you can do to the 'Queen's taste.'

The first information of the proposed deal was a letter received from Alex on the 1st at Elk City on the eve of starting for Butte. He has shown me letters from the parties from Duluth that reads well. They want 20% as promoters. All this I suppose he will write to you. One thing I am not in favor of, trying to get too many claims at present into a corporation.

The Eastern, Ouichita, Bland, Ready Cash, with

the Right Bower, which I have the assurance from W. A. Clark that I can get his as well as Mrs. Joe K. Clark's interest in. Jesse L. Roy of St. Louis owns $\frac{1}{6}$ of it and the Estate of Lee W. Foster $\frac{1}{6}$. The latter interest I can get also.

I am sorry that I was not here when parties were for I am a pretty fair sifter of men myself. That Mr. Wilnot that you met here is up from Salt Lake where he is now located [128—70] and is very anxious to look at your Henderson property. A year or so ago I had told him about it while traveling with him and he appears to have remembered it. It may be that I will take him over. If so I will report to you as to how your custodian is looking after your property, and if Wilnot wants to make a deal will send him direct to you to do it.

I do sincerely hope that Mrs. McLure has improved since her return to St. Louis. I expect you have all the boys with you at least during their vacations, which will be a great pleasure for you.

With best and most sincere love and regards,

I am truly

ROD D. LEGGAT."

[Plaintiff's Exhibit 3—Letter, Rod D. Leggat to
C. D. McLure.]

"Mr. C. D. McLure,

St. Louis, Mo.

Dear Sir:

Mr. Germain (party that bought your mill at Hailey) just came here from Midas, Nevada, and has just left me. He wanted an extension on note and

mortgage that you hold for three months. I told him that I had not a thing to do with it and could not say what you would do as to an extension, as I had no power to do so. Told him to write you, which I suppose he will do at once.

He told me that it has been continually raining in Nevada for the last month and that he has been tied up by having his boilers and corrugated iron for roofing for mill at Eleho and not able to haul them to property on account of the fearful condition of the roads. He said that when he got the mill running he could easily clear five thousand dollars [129—71] a month. *He* mill man is a fellow that you had at Neihart by the name of McCall, you know him. He also has a man by the name of Masters who is a millwright and has worked for you and I understand both of them understand their business.

He said he had recorded the mortgage in the county and state where mill is and had returned it to bank at Hailey to be sent to you. I told him to write you fully, but nothing but facts, so I expect you will have typewritten letter full of woes. I am rather inclined to think that A. T. Morgan here is somewhat interested with him.

I have seen parties from Nevada and there is no doubt as to the utmost continually stormy weather. They have been having it in that section for over a month.

I want to get this letter off this mail so with best wishes,

I am as ever truly

ROD D. LEGGAT."

[130—72] [Plaintiff's Exhibit 4—Letter, Rod D. Leggat to "Charlie," January 26, 1907.]

"Butte, Montana, Jany. 26th, 1907.

My dear Charlie:

Yours of the 22d to hand, so I hasten to give you my ideas as to what I think the different claims can be bonded at for 18 months, if done now. Dennis Driscoll is anxious for me to try to do something with the Ready Cash in conjunction with Eastern and Bland. Have made no direct proposition to him, but think I could get it at about 60,000, 10% six months and possibly get him to take stock for the balance. If in the hands of a strong company that was able to sink 1000 or 1500 feet shaft say, on the Eastern and crosscut to the Ready Cash (just will say that on Thursday he bought 600 shares of the Butte & Superior in New York at one and three-quarters, so he has got faith in that vicinity) I honestly believe that if I had the cash that I could buy Warren's $\frac{1}{2}$ interest in the Bland for 10,000, for he is extremely hard pressed and has to have money; mighty expensive man himself and formerly much more so. As to bonding the Bland; you would have to make a pretended bond first or we could not get him; or might be better to consent to any reasonable figure and terms. You know you held it high at 150,000 and they all know that. Think at 80 or 100,000, 10% cash in six months and bond for 18 months, I can get them to take all or at least $\frac{1}{2}$ in stock. The Ouichita is a fraction and I think Solas King would bond the same as you, 40,000 or less. The Eastern

figure must be cut down from what we held it at, to get the other claims at a proper figure. This you will readily see.

The Ray-McKee own $\frac{1}{4}$ interest in the Right Bower, and W. A. Clark the other $\frac{3}{4}$. Clark told me a year ago that he [131—73] would consider a proposition as to that claim, but I did not follow it up. The Deadwood, largest interest owned by Dr. Reins, was once bonded for 80,000, but not taken. This is the time to act, for times are very hard and better terms can be made. I saw Wilmot, Supt. for Lewisohn, and talked our group up. He said that parties put the Bland, Ready Cash and other claims west of the Bland, up to the Lewisohn main office in New York two years ago and showed me the report that they sent him from the main office. I told him that the Bland could not have been in, for you never gave a bond on it, nor did Driscoll on Ready Cash; some fakir, no doubt. They are not working on the Granite Mountain now.

The Butte & Superior are getting their ore at the 500 ft. level east of shaft. Ledge 15 feet wide; silver and gold and 1 to 2% copper; still sinking shaft which is 700 feet deep. The Elm Orly shaft is down 700 feet, and are getting fine copper ore, rich in silver on the Butte & Balaklava. They have struck a big, high-grade copper vein. Stock 10.00 now. Only commenced last July to work; formed a company and paid 400,000 for two fractional claims; look on the Butte map. I send mining paper in separate cover.

It was a Mr. Alexander Ray that was out here last

summer, connected with the Globe-Democrat; stockholder. Am satisfied that he would take stock for interest. Not over 800,000 for it and under bond at 18 months.

It is getting late so will close to get this off on midnight.

With best love and wishes.

I am truly yours,

ROD D. LEGGAT."

[132—74] Plaintiff's Exhibit 5—Letter, Rod D. Leggat to Chas. D. McLure, September 22, 1909.]

"Butte, Montana, Sept. 22d, 1909.

Mr. Chas. D. McLure,

St. Louis, Mo.

My dear Charlie:

Yours of the 3d with check payable to the Montana Secretary of Pioneers received some time ago. I met J. U. Sanders, secretary of the Pioneers, and he told me the enclosed bill for dues was correct and that J. T. Connors had not paid the same. I therefore turned your check for 8 dollars over to him and had him receipt the within bill.

I *had* to go to Helena on the 27 to attend the annual reunion of the 'Pioneers.' My heart would be pleased if I could have the pleasure of meeting you there. While there I will look over the secretary books and see if this bill is correct.

I met Mr. James Breen on the street to-day and he asked me if I had placed the proposition he had made to me for the purchase of your property in the Porphyry Duke before you (which was one year's

time at 100,000.00). I frankly told him I had not, for it was useless to make such a proposition to you. But I thought you would be willing to make a deal for a fair consideration and give proper time. I told him to go to St. Louis and see you in person or write his proposition direct to you. This he declined to do, but did, I think unknowingly to him, pay you a very high compliment by saying you were a 'hard-headed Scotchman,' which I absolutely denied, for you were a Missourian, true and blue and would 'have to be shown.'

Anyway he said he now had control of the 'Paupers' Dream' property and was trying to make a deal, and if you would place [133—75] deed in escrow in 1st Nat. Bank here at a fair consideration for six months he thought he could work it out. Will say that he to-day was strictly on business and I don't think he and Heinly are very friendly.

Now I don't want you to think I am interfering in your affairs, but I do wish you would sometimes take advantage of making a deal by letting me know what you would be willing to do.

I expect to leave for Idaho the last of next week and possibly will be gone until the 20th of Oct.

With best regards to self and family,

I am truly

ROD D. LEGGAT."

[Plaintiff's Exhibit 6—Letter, Rod D. Leggat to
“Old Solomon,” October 28, 1907.]

“Butte, Montana, Oct. 28, 1907.

My dear Old Solomon:

Your letter of the 22 does me lots of good to receive, for just as I am (also others) in the depths of despair your welcome letter comes and is opened by me overlooked by the statute of ‘Daly’ in front of the Federal Bldg., or Post Office. I assure you that it braced me up, for if there is any man on earth that holds the flag firm and never lowers it, it is you. I am with you, for you are no ‘quitter.’

As to the Savings Bank, it is all right. The Mercantile of New York did not get at them. This I know for a certainty. I enclose clipping but really the doubt against the bank was made by the Amalgamated strikers and Davis Daly Co., for at times I *can* ‘canny.’

[134—76] So God bless you and yours,

Ever Truly,

ROD D. LEGGAT.”

[Plaintiff's Exhibit 7—Letter, Rod D. Leggat to
C. D. McLure, 1/2, 1907.]

“Butte, Montana, 1/2, 1907.

Mr. C. D. McLure,

St. Louis, Mo.

My dear Charlie:

Yours of the 30th with copy of Crowley letter and your reply just to hand. Will say that where I have no direct interest in the Bland, you done what was

right for all of your *dirrerent* interests to refer the matter to me. Thanks.

Crowley has not got the bond for Forbis and does not own in the Bland. A Mr. Le Karon got a bond for $\frac{1}{2}$ interest in Bland from Charles Mattison, which I wrote to you about, at 50,000.00 for fear that they would get Argyle interest tied up at that figure. I wrote to him, Tom, at Oak Park, California, that you held the claim at 150,000.00 and that you wanted the Argyle interest to get what you got and told him not to do anything, or tie his interest up without consulting me or you.

I also wired to Dennis Driscoll (who owns the Ready Cash claim) at Los Angeles, Cal. what he held Ready Cash at. His answer was 100,000, and he will do nothing now without first consulting me. As to who this Crowley is, I don't know, but as I have been almost bothered to death by this would-be promoter I cut them short, for as you Missourians say *that* 'have to show me.' I looked for a telegram from Mr. Rakously, consulting engineer of the Butte & Superior M. Co. from Duluth on or soon after his arrival there. Should get it by the 4th.

[135—77] I quietly saw to it that Mr. Wilmot should hear that Mr. Rakously had been in consulting with me. Result was that last evening he called me up by phone wanting me to meet him at the office. Mrs. Leggat went to the phone and told him that I would be at home all evening, so in 20 minutes he called. He himself wants to get this property or group, and has put it up to his Co., and told me that

Mr. Channing, the head one of his Co. would be here on Monday the 4th, and asked me to hold any deal in abeyance until he could take Channing over the properties, so you can see that I have been busy without trying to force them into a deal.

Wilmot wants to take hold of the Elvina on his own hook and I think we can consummate a deal when you come out, for I told him you possibly might be out on the 15th.

Just consider my suggestion as to you having power of attorney from Mrs. McLure as well as others, for if any deals are made it would save lots of delay.

Mrs. Leggat has not been at all well. Still up and around. I quietly one day told her that you were a little too stiff on terms and it was hard to get at the right parties. She absolutely told me that if I had half the sense and could hold fast as Mr. McLure did to property it would be better for all, so you see she stands with you firm.

We both join in best regards to you and yours.

Which one of the boys was hurt? I hope not seriously.

Very truly,

ROD D. LEGGAT.

If any important matter comes up will wire you."

**[Plaintiff's Exhibit 8—Letter, Rod D. Leggat to
C. D. McLure, 1/28, 1907.]**

[136—78] “Butte, Montana, 1/28/1907.

Mr. C. D. McLure,
St. Louis, Mo.

My dear Charlie:

I have not written you of late, for I really had nothing new to inform you of.

Saturday at Administrator sale of the James Forbes estate one-twelfth interest in the Narrow Gauge claim was sold at 30,000.00. I hear that the heirs had given an option on it over a year ago, but it had taken until now to consummate the deal.

I do think it would be a very wise move to get the estate interest in the Eastern, Ouichita and Bland settled up and that at once, for it will surely make delay on a deal if it is not done very soon.

A Mr. Victor N. Rakowsky of Duluth, the chief mining engineer for the Butte & Superior Co., has been here for a week and leaves to-night for Michigan. I gave him terms as you stated for the Eastern, Ouichita and Bland or interest thereon. Eastern 200,000.00, 20% when deeds were placed in escrow. Bland for your interest at the rate of 150,000 for whole claim. Ouichita at same rate per acre, it being a fractional claim. I think the terms above are just as we agreed on. I told Mr. Rakowsky that he could get the ‘Ready Cash’ claim at the same rate per acre, but the owner (Dennis Driscoll) was in California. Verbally he told me what he would do. I am afraid that you have a bad lot interested with

you in Bland, for I told Charlie Warren that you held the Bland at 150,000 for claim, and to-day Mat-tison, who holds in his name 6/12 or one-half of Bland told me he had bonded the same at 50,000.00 for one year. Knocking down. Siles King will stand with your figures on the [137—79] Ouichita. He is straight.

Mr. Rakowsky merely wanted time enough to return to Duluth to consult with parties there and he would wire result at once. I rather think that it is not for the Butte & Superior My. Co. but for a New Syndicate of Michigan and Wisconsin men.

Mr. Wilmot of the Lewisohn Development Co. returned from New York, but as he had not seen me further concerning the Eastern and Elvina, which he was to place before his company, I take it for granted that any deal for them by Co. is dropped for the present.

There has been several local parties wanting to tie up Eastern, Bland and Ouichita, but I gave them your direct ultimate terms and figures and that just staggers them. Will just say that I don't think that any outfit will pay 20% on deeds being put in escrow. On sixty or ninety days after escrow possibly it might be done.

When do you expect to come out here, or can you come? If there is a chance to make a deal for them I would wire you. I think it would be a good idea for you to get power of attorney from your wife and others, so in case you are called here there would be no delay as to making deeds.

When will P. A. F. be out here? It seems time for his appearance.

With best regards and wishes, I am truly yours,
ROD D. LEGGAT."

**[Plaintiff's Exhibit 9—Letter, Rod D. Leggat to
C. D. McLure, February 10, 1907.]**

[138—80] "Butte, Montana, Feb. 10th, 1907.

Mr. C. D. McLure,

St. Louis, Mo.

My dear Old Boy:

Yours of the 6th to hand and a good rounding up you gave me as to my hoary locks, but I forgive you this time, for your extreme flattery as to the good qualities of my better half fixes you solid in her good graces.

Wilmot called me up by phone on Wednesday evening and told me Mr. J. Park Channing, consulting engineer and head man of the Lewisohns, was here and wanted to know if the Eastern proposition was still open. I told him it was to him. He said they would be taking the mines in for several days and he would get Channing over the Eastern, Bland and Ready Cash just as soon as he could. So I have been very anxiously awaiting to hear or see him. Am well satisfied that Wilmot wants them to get hold of that group, and think they are taking it in very thoroughly, for neither of them have been to the 'Silver Bow Club' or have they been wasting any time doing things socially. I hear of a slight rumor that there might be a consolidation of their Granite Mt. and the Tuolumne Co., for the Tuolumne

Co. are sinking a three compartment shaft on their claim, which is near the Granite Mt. It looks to me as if there might be something in it, for their shafts are near together. So this might be the cause of them not seeing me up to this time. I don't want to go to them, only would like to meet by chance.

John Corrette, son-in-law of Dennis Driscoll and partner of Forbis & Evans, attorneys, called this afternoon to see me as to the 'Ready Cash.' Burt Adams Tower had been writing to [139—81] Driscoll to get the Ready Cash, but Driscoll told Corrette to see me, as I had wired him and he wanted to act with me. So you see how they are tying things up or trying to. Tower is the one you figured with on Bland last spring. And if a lot of different fellows get options on small interests the thing will be spoiled for any one.

As for giving Tom any information, other than to hold him solid to get at the sale of 150,000.00 for the Bland, did not even mention the Eastern, let alone the Elvina. Three or four people have asked me where his address was, but I couldn't tell them. So I am satisfied that at least some of them have written him.

I wrote him again to-day to hold, as I had formerly written him and it might not have reached him.

I got information from Mr. Rakowositz from Duluth that he could not make a deal there for his parties were absent from city.

I think you are wrong as to the Butte & Superior Co. wanting the Eastern. They have got, I think,

all they want at present and have paid out a great amount of money, so they can wait. Will post you just as soon as I know anything. When do you think you will be out here, for I might have to make a trip to Portland, Ore., on my Alaska deal or deeds in escrow. Not certain, but want to be here when you come.

Enclose clipping. Don't you worry about Teddy. If they all were as straight and honest as he one might be a little more proud of being an American citizen.

With best wishes from the 'Better half' as well as myself,

I am truly,

ROD D. LEGGAT.

[140—82] As I did not mail this last night, have just got new information so give it as I got it. Mr. Corette just told me that Bruce Kremer, the representative of the Butte & Superior Co. here, was to meet him this afternoon on a deal for 'Ready Cash,' but as Driscoll had written him to consult with me (Rod) as to the Ready Cash he wanted to let my know and will inform me of any proposition made before consummating the same. Driscoll, Corrette tells me, is willing to take part stock in any good company. Corrette has power of attorney for Driscoll.

I am afraid of different parties trying up interests so that a bungle will be made, and then I am apt to be left with something that I would rather unload.

Tell P. A. F. that the 'Coeur de Elaine' Metal &

S. Co. stocks are held to-day at 1.25. Stewart strong.

Will write again to-morrow if I get anything important.

Yours, ROD."

[Plaintiff's Exhibit 10—Letter, Rod D. Leggat to Charles D. McLure, May 25, 1907.]

"Butte, Montana, May 25th, 1907.

Mr. Charles D. McLure,
St. Louis, Mo.

My dear Charlie:

Yours of the 22d just to hand, contents noted, so will reply at once.

You will please find herewith proxy signed by me. Also witness signatures to same.

As to acting on the Board, you know best, but anything that will be of service or beneficial to your interest, I am at your service. Command me.

One thing I want distinctly understood. If there is [141—83] any stock or interest transferred to my name I will on demand from you transfer it at once back to you, so just keep this.

Yours very truly,

ROD D. LEGGAT.

My diggings in Idaho are running nicely, and I am in tip top condition personally. Would like to see you greatly. When will you be out here?

ROD."

[Plaintiff's Exhibit 11—Letter, R. D. Leggat, to
Charles D. McLure, March 25, 1893.]

“Butte, Mar. 25, 1893.

Mr. Charles D. McLure,
St. Louis, Mo.

My dear Sir:

I have just heard that there is parties that are trying to get the control of the ‘Southern Cross’ stock for some object. I have reason to think it is for John Hayes, but there must be some other parties behind him, for he has not the nerve to go into it himself. Do you think that any St. Louis parties are behind him. I could have got 40,000 to 50,000 shares in lots of from 1000 to 5000 for from 7 to 9 cents a share, but I only offered 5 cts. and that only to parties that were hard up and wanted to sell. So I gave them to understand that I was only accommodating them by offering that. Of course I do not know for sure that the above party is after it, but as it is a good proposition and there is money in it I take it for granted that it is so. The railroad going through that section sure will show the moneyed men a great opportunity to invest at a large profit. I will let you know just as soon as I can if there is any real deal for the property. I have been looking for a letter from you for some time and thought I would have your draft to pay off with long ere this. Hoping to hear from [142—84] you soon,

I am truly yours,

R. D. LEGGAT.

‘Daly’ has got hold of the ‘Alps’ property on Harvey Creek. It is gold properties.”

**[Plaintiff’s Exhibit 12—Letter, Rod D. Leggat, to
Charles D. McLure, April 8, 1893.]**

“Butte, Apr. 8th, 1893.

Mr. Chas. D. McLure,
St. Louis, Mo.

My dear Sir:

You will please find herewith a sort of a report or hurried data of a gold property situated in Jefferson County, this state. It is made by L. B. Olds, who has examined the property and has it tied up by bond.. I have heard of this property for some time and know that they have been working it by slicing the decomposed ore off every season. Mr. T. T. Baker of Baker & Harper gave me just about the same data concerning the property as the enclosed reports do, and he told me several months ago concerning it.

The title to water district, quartz claims and placers are perfect, or so reported, so I thought I would send you Mr. Old’s proposition and if you think anything of it you could send your experts to examine. This will have to be done quickly if you consider it, for I have only got a short call on it. Please let me know your decision.

I have not heard from you in a long while. Have been very anxiously looking for draft from you, so I could settle the Elvina accounts all up. Please send it to me for it places me in a very bad position with those we owe.

[143—85] Hoping to hear from you at your very earliest convenience,

I am truly yours,

R. D. LEGGAT.”

[Plaintiff's Exhibit 13—Letter, R. D. Leggat to C. D. McLure, March 8, 1893.]

“Mar. 8th, 1893.

Mr. C. D. McLure,

St. Louis, Mo.

My dear Sir:

You will please find herewith statement of the last ore run by Mr. Adams with check for the amount of 305.55 received. I sent you by mail two different St. Louis drafts payable to you or order. 1st one for 1272.63 (less exchange) and another for 1273.88 (less exchange). As I have not received any acknowledgment of their receipt by you I am afraid that they might have miscarried. If you have not received them let me know. I have all small tools and filings of all kind securely packed in boxes and numbered and all the machinery tallowed and white leaded and in good shape. I would have stored at A. J. Davidson, but they could not give the storage room. Am looking for some permanent and responsible storage warehouse (that does not change hands monthly). Will then store and send warehouse receipts to you as you instructed. I only got back from my mission at Helena on Friday last, since which time I have been sick and confined to my house. Am all right now and solid as ‘Granite County.’ Col. Hart is a whale and the opposition

that he overcame, conquered and won from was the strongest in the state. I say all honor to him.

I hope you will send me draft so that I can clean all accounts up at once, as I want to send you all vouchers and cannot do so until I have the where-withall to do so.

[144—86] Hoping to hear from you at your earliest,

I am truly yours,

R. D. LEGGAT."

[Plaintiff's Exhibit 14—Letter, R. D. Leggat to
Chas. D. McLure, February 13, 1892.]

"Feb. 13th, 1892.

Mr. Chas. D. McLure,

St. Louis, Mo.

My dear Sir:

Yours of the 7th to hand; also both telegrams of same date. You state that you wired me on the 1st. That telegram did not receive. I have closed the mine and have put all of the underground workings in good shape so no damage can be done by water. I will store the loose material with A. J. Davidson as you instructed.

You will please find herewith St. Louis draft payable to you for 1273.88 (less exchange of 155). Also statement of ore worked. What I presume Mr. Adams has reported as I told him so to do. I just got telegram from Helena to get these this evening to be on hand for the Committee meeting of Towns and Counties, so am in hurry to catch train. I have got Walter Cooper, Senator Hoffman and the entire Bergman delegates to assist us on the 'Granite County.' I *hapned* to be in a good position with

them, as I had been strong with them on the 'Capital' question last fall and stood shoulder to shoulder with them in the location of the college at Bozeman. I will merely say that we will have a hard fight. 1st it has come so late in the session. 2d. the members think there are *two* many counties being made. 3d. the Deer Lodge are shrewd politicians, are well acquainted with members and have a large, strong lobby that are [145—87] at work and know their business and do it well. The Senatorial matter this week will have a great influence on it. My letter in December to you as to that result will come true. Neither Clark or Dixon can be elected. It will be a new man as I then stated. I am keeping my hands off of the Senators.

Yours very hastily,

R. D. LEGGAT."

**[Plaintiff's Exhibit 15—Letter, Rod D. Leggat to
"Charlie," October 6, 1906.]**

"Butte, Montana, Oct. 6, 1906.

My dear Charlie:

Got your telegram telling me to get abstracts from Mr. Poser and send to you. As he was out in the fields I only got them a short time ago and too late to get them in the express office, and as I don't like to trust the mail, will hold them until to-morrow and send them to you by express.

I gave the order for straight abstract of the notes you gave me to the abstractor of Deer Lodge & Powell County and he will rush it, but tells me it will take two days to do it right, as you wanted everything either by location, transfers or trades of Chas. D.

C. D. Louis or his widow, John T. or J. T. Connors. When you get it it will be right. Don't blame me for delay, for I only could get the proper person that had the abstracts of Powell and Deer Lodge County in their possession, and then at Anaconda.

Mr. Power told me he had written to his people (not wired) but that he thought they would want more time to inspect the properties. I merely told him (as you had done) that 20% per cent would have to be paid when the properties were placed in escrow and that we would not tie properties up unless it was done not for [146—88] a day. He spoke of them having to send other experts to inspect and examine, but I was firm as to what you want.

Rather looked for you to-night, but go to church to-morrow and don't disappoint me again.

Where shall I send the abstract ordered. Is P. A. F. there, and when will he be here? I have to make a trip to Idaho and don't want to leave until I see you.

Hastily,

ROD D. LEGGAT."

**[Plaintiff's Exhibit 16—Letter, R. D. Leggat to
"Charlie," December 2, 1906.]**

"Butte, Montana, Dec. 2d, 1906.

My dear Charlie:

Your two letters came to hand as well as J. C. Adams copy of report on the Elvina claim. I have not see Mr. Wilmot since I wrote you. Thought it best to wait until he heard from New York, as he was to report on property and the price and terms that we agreed to make on the Eastern as well as

your terms on the Bland and Ouichita, which I gave him in strong terms and nothing like weakness at that, either in manner or voice.

Still at utmost thoughts the 20% payment looks mighty big to be a successful deal to me, or if it is it will take time to accomplish it.

There has been two different parties after the Eastern and Ready Cash. One yesterday by the Supt. of the Moulten Mining Co., G. W. Brown, who has been with Clark for 10 years, and I gave him figures and term price 200,000, 20% down on signing papers. I do not think he is getting price or terms for Clark, [147—89] but I saw him the other day with an Englishman that is here from South Africa and is going to London on the tenth. In fact I gave terms on my Bummer and Occidental claims the other day to Dr. Freund, who lives next door to me, who is acting for the Cockney.

As you instilled some of your holdfast nerve in me I put the price high, 150,000, and did not bat an eye at that. To-day at 4 o'clock was called up by phone by party that formerly was Dun & Co., confidential agent here in Montana. Met him shortly after and he wanted figures on Eastern. Being Sunday I merely told him that a deal could be made for the properties, gave no price, but said 20% of price must be paid down before deed went in escrow and parties must be responsible financially. Some more of C. D. Mc wisdom and nerve. Will meet this party to-morrow and may glean something further. J. N. B. Foster (deceased) $\frac{1}{8}$ interest in the Deadwood claim adjoining the Eastern is to be sold on

the 21 of this month. I think it had been bid in at 1000.00. Will go to Probate tomorrow and get it right.

What best to do about it, write me.

The Butte Hill Copper Co. is the shaft that we see from the Elvina last spring and we drove there. Their ground extends east to the Colleen Bawn and north. Some English Jews are interested in it. They have not struck anything as yet and are not working, but expect to start in soon.

Can't you send copy of Col. Hart's report, might want it.

With best regards to you and yours,

I am as ever truly,

ROD D. LEGGAT."

[**Plaintiff's Exhibit 17—Letter, Rod D. Leggat, to
Jesse B. Mellor, August 20, 1909.**]

[148—90] "Butte, Montana, Aug. 20, 1909.

Mr. Jesse B. Mellor,

St. Louis, Mo.

Friend J. B.

Yours with slip from the G. D. was gladly received for it eased me very much as to my sister's condition and many thanks for the same.

Just got yours of the 17th as to the taxes. I have always paid the taxes myself on the Elvina and Eastern claims. The taxes on the Bland has been paid yearly by the John N. Curio Est., who own a small interest, so that is all right, for I just come from there, as I wanted to be sure before writing you.

The taxes on the Ouichita Mr. Silas King told me before he died that he always paid them. The executor of the estate is now absent, but I will see him on his return and if he has not attended to it I will.

Am extremely pleased to hear that Mrs. McL's condition is improving, for it will be a great relief to our dear friend and help to make him as of yore.

I do hope that something can be done to get his mind on something so that he will not brood so much on imaginary troubles.

With best regards and esteem to self and family, as well as the Gov.

I am truly,

ROD D. LEGGAT.

Will write him to-night.

[Plaintiff's Exhibit 18—Letter, Rod D. Leggat to Chas. D. McLure, October 19, 1910.]

[149—91] "Butte, Mont. Oct. 19, 1910.

Chas. D. McLure,

821 Security Bldg.,

St. Louis, Mo.

Address of General Manager R. M. Atwater is Duluth, Minn. ofs. A. B. Wolvin brought Elvina matter up with his brother in charge here. He will report it to headquarters. Doctor Reives as yet has heard nothing from his parties.

ROD D. LEGGAT."

[Plaintiff's Exhibit 19—Letter, "Rod" to "Charlie," February 5, 1908.]

"Butte, Montana, Feb. 5, 1908.

My dear Charlie:

I have been engaged since Monday on the suit I

(Testimony of Charles D. McLure.)

commenced as power of attorney for the J. N. B. Foster interest, to set aside the deed for one-sixth of the Deadwood claim. I enclose the clippings, and as it will not be concluded for a day or two yet will keep you posted.

John N. Simpson spoken of was the man that made all the deals for the Butte & Superior Co. claims.

In my testimony I put the value at June, 1906, at 80,000.00. Others were all higher. Looks as if I have been of some use for charity's sake, for the rascals are on the 'Ragged edge.'

Am looking for instructions from you. Did you get blueprint and report of Alexander?

Hoping to hear from you soon

I am hastily,

ROD."

[150—92] The WITNESS.—That is not all of the correspondence I had with Mr. Leggat, these letters introduced; that is only a small portion of them. I have examined all of these papers that I have brought here with me. The papers are letters and correspondence I have had with Mr. Leggat during the time of our poast association. All of them, unless there would be one or two of Mr. Alexander Leggat's. It is all Mr. Rod D. Leggat's correspondence with me, with maybe one or two exceptions.

Direct Examination of Charles D. McLure continued by Mr. MAURY.

Q. Now, Mr. McLure, coming down to the immediate transaction in this suit, taking the properties

(Testimony of Charles D. McLure.)

that are involved in this suit, what has been the value of these properties since, we will say, June 1st, 1913, or the 1st of Jan. 1913? What are the values of these properties described in the complaint?

A. Well, there have been several parties who came to me for prices on the property, several of them, Mr. Channing, came after me to get me to set a price on the Eastern, and he tried through some one, I am not sure, but someone introduced me to him and asked me for a price on my interest, and he offered me one hundred thousand dollars and I declined it, and said he would have to see Mr. Leggat, that I would not make a price on the property, that Mr. Leggat had charge of it and that the property was held at two hundred thousand dollars and that he would have to see Mr. Leggat. There had been several offers at different times to get the property, and especially the Eastern, at a price below two hundred thousand dollars; and on the Bland there was at one time, Mr. Charles S. Warren took the proposition and offered eighty thousand dollars cash, and he said Mr. Leggat wrote to him about it, and I declined it and said that Mr. Leggat had charge of it and that he would have to see Mr. Leggat, and finally I think Mr. Warren telegraphed him. [151—93] I mean Charles S. Warren, Genl. Warren. He telegraphed him and I told him there that I would not sell for less than the price designated. I have bought and sold a great many mining properties, both quartz and placer, for the last thirty

(Testimony of Charles D. McLure.)

years; yes, it dated back to that—in 1860. With my experience in mining matters, I have familiarized myself with the values of mining properties, and what they were bought and sold for.

Q. When the properties involved in the complaint, the interest in the Elvina, the interest in the Ouchita, the interest in the Eastern, and the interest in the Bland quartz lode mining claims were advertised for sale, what did you do on the morning of the sale?

A. On the morning of the sale, I think the sale was had about nine o'clock; I got up early in the morning and got my breakfast and went up to the sheriff's office, and I got there before eight o'clock, or I believe a half hour or a quarter of an hour before eight o'clock, and the deputy, or clerk, was there and I asked them if I could come up and pay off the judgment and stop the sale—in other words I wanted to save any expense of a sheriff's sale, and he replied to me that the property had been advertised for sale and would have to be sold, and I asked him then what time it would be sold, and he said at ten o'clock; I then asked him if he would take my check if I would bid on the property, and he said it would have to be a certified check. Well, I says, you can telephone to the bank and see whether the check is good, and he replied then, he said, "Mr. Wight will be here at the sale, and if he will take your check it will be all right," and my reply was that Mr. Wight had sued me and I would not ask him to take my check, so I came up and went to the hotel, which was at least a few minutes before nine o'clock, and I telephoned to

(Testimony of Charles D. McLure.)

Mr. Leggat and told him what had passed, and as Mr. Leggat was an [152—94] owner in the Eastern claim, which was in my name, or rather I held it, and I told him they had refused my check and I says “come over” and he said “All right, I will be right over” and he came over. And I was sitting in the hotel waiting for him to come and I saw him coming across the street, and before he had crossed the street I went over and stopped him, and I says, “Mr. Leggat, the sale is to be at ten o’clock” and I says, “They refused my check” and he says, “They will take my check” and I says, “will you come up and bid it in,” and he says, “Yes,” and I says, “I will give you a check when you come down” and he says, “all right, I will go up and attend to it” and he went up to the sale, and I suppose it was about a quarter after ten or half-past ten, anyway between ten and eleven o’clock and he came down to the hotel and he told me that he had bid the property in, and he said that Mr. Murray was there, I think he said James A. Murray, but I am not sure, but I know he said Mr. Murray was there, and he said some of the Hennessys, and they were going to bid the property in, and he went in and told them that it was our joint property, and said that by his own influence he had persuaded them not to bid against him, so he told them their account would be all right and that he would bid it in, and he did bid it in, and I says, “Rod, if you want a check for this I will give you my check for it” and he says, “Never mind that—

Mr. SCALLON.—We object to any conversation

(Testimony of Charles D. McLure.)

of this kind, any oral evidence of any private agreement, or any conversations subsequent to the sale, as incompetent and not the best evidence.

The COURT.—The objection is overruled for the present; if it is not entitled to any weight, the Court in making up its final decision will give it none.

Q. What did Mr. Leggat say about his having procured these other gentlemen not to bid?

[153—95] A. He said to them that he was interested in it and through that fact they had declined to bid on it, on the theory that he would, himself, see that their debts were paid as well as his own, and that they would be perfectly secured, as the matter was in his hands.

My impression is that the amount that he had paid was only nine hundred dollars, I am not sure about that, whether that was the amount, but nine hundred and some odd dollars.

Q. What transaction took place in August of the present year?

A. Why, I think Mr. Leggat was going to St. Louis, he was going there on some business connected with the enterprise, which is now the hotel, or in some way we were talking—It was nothing which concerned me whatever, and he says, “Can you give me five hundred dollars?” and I says, “Certainly I can” and I took out my check and I gave him five hundred dollars. I had that check on yesterday down at Gunn, Rasch & Hall’s office. It had been returned to me in the ordinary course of business. Mr. Leggat’s signature was on the back of it

(Testimony of Charles D. McLure.)

when it was returned. That money had not been repaid to me up to the date of the sale; I had not even thought of it until I got to thinking about matters connected with this case. I never thought about it until after I came west here this spring. I found the check; I got to hunting up these papers and I found this check; I had forgotten all about it. There was to be no repayment with interest, not then nor now.

Q. Mr. McLure, did you have any further conversation with Mr. Leggat about this property after that sale?

Mr. SCALLON.—To which we make the same objection.

The COURT.—The objection is overruled.

To which ruling of the Court counsel for defendant duly excepted.

[154—96] Q. Mr. McLure, did you finish telling us the conversation you had immediately after the sale with Mr. Leggat?

A. I think I have, there was nothing transpired—we may have talked about the chances—

Q. You told us that you told Mr. Leggat you would give him your check? A. Yes, sir.

Q. What was said about that?

A. Well, his reply to that was, it didn't make any difference, he said, "it does not make any difference, I will take care of it, or I will look after it," and of course we were interested together and Mr. Leggat had on many occasions felt that he ought to have—well one special occasion I recall to mind having

(Testimony of Charles D. McLure.)

signed his paper, we would sign them together, and he says, "Say, suppose something would have happened to you I would have been in a nice scrape with that paper out against you" and we talked the matter over and we mutually agreed that he would deed the property back to me if it became necessary, and—

Mr. SCALLON.—I object to this as being an opinion of the witness; let him state what took place, and I move to strike out the latter part of that answer.

Motion sustained.

Q. What did he say about that in substance, we do not ask you for the exact words, unless you happen to remember them, in relation to reconveying the property, or deeding it back to you. What did you say, and what did he say, if you recall at that time, immediately after the sale?

A. I think I asked him, I says, "Rod, if the sale goes through will you make me a deed" and he said, "Yes," and then I askel him "in case the sale does not go through will you make a deed back to me, keeping your half interest in the Elvina" [155—97] and he said, "Certainly I will."

That half interest in the Elvina was procured in this way, I worked for the first quarter interest—

Q. I am talking now about the time of this sale—you explained that when Judge Rasch was conducting his examination about who owned the Elvina, but, how did the interest stand in July, 1912?

A. It was all in my name. He was the real owner

(Testimony of Charles D. McLure.)

of one half, Mr. Leggat, and I the other half.

On July 17, 1912, Mr. Leggat and I signed a paper together. The lease and option to which you call my attention is the paper. It is the one that was delivered to Anderson and Slattendale. It was a lease on the Elvina.

Mr. MAURY.—We ask that this lease be marked Plaintiff's Exhibit 20 and we will offer it in evidence.

Lease received in evidence without objection and is as follows:

**[Plaintiff's Exhibit 20—Lease, July 17, 1912,
between Rod D. Leggat and Charles D. McLure,
et al.]**

LEASE AND OPTION.

This indenture, made and entered into at Butte, Montana, this 17th day of July, in the year 1912, by and between Rod D. Leggat of Butte and Charles D. McLure of Phillipsburg, Montana, lessors, and Ernest David Anderson and P. Andrew Slattendale, lessees, witnesseth:

That for and in consideration of the rents and royalties to be paid by the lessees, and the covenants to be performed by the lessees, all as hereinbefore set forth, the lessors have leased, demised and to mine let unto the lessees for the period of two years commencing on the 31st day of August, 1912, and ending on the 31st day of August, 1914, (unless sooner terminated by forfeiture of some condition hereinafter set forth) all of the following described

property situated in Silver Bow County, [156—98] Montana, to wit:

The Elvina quartz lode mining claim, being Survey No. 1054, lot No. 251, and being patented, and in Summit Valley Mining District in the said county and state.

Upon, however, the express terms and conditions binding on the lessees:

The lessees shall pay to the lessors twenty per cent of the net smelter returns of all ores shipped from the said claim or any part thereof.

The lessees may within thirty days after the expiration of this lease, either by lapse of time or by forfeiture, remove from the said claim all machinery and surface improvements owned by them, unless the lessors do exercise their option of buying the said machinery and surface improvements, which is hereby given, the price to be fixed, if the lessees and the lessors cannot agree upon the reasonable value, by some disinterested arbiter to be agreed on by the parties hereto.

Two days before each and every shipment of ore from the said mine the lessees shall cause to be mailed a notice to each of the lessors directed to each at Butte, Montana, stating to what mill or smelter or reduction works the said shipment is about to be made.

The lessors shall at all times have the right to use and enjoy, taking care of and handling at their own expense, however, after the same shall have been raised to the surface of said mine, any and all water pumped from the said mine by the lessees or their

executors, administrators or assigns, save and except enough for the use of said lessees in their mining operations.

[157—99] And commencing on the said 31st day of August, 1912, the lessees shall, during each calendar month, do at least twenty shifts of eight hours each and of two men at work upon or underneath the surface of the said claim. That is to say, there shall be forty shifts of eight hours each done by the lessees upon the said claim in each and every calendar month during the said lease;

Commencing at sometime within the first twelve months of the said lease—that is to say, at sometime prior to the 31st day of August, 1913, the lessees shall commence and drive, with reasonable diligence, at the level 250 feet below the surface of the said claim, a crosscut to and into the north vein in the said claim. The lessors reserve the right to at any time inspect either in person or by agent, any of the workings made by the lessees on or under the said ground; and the lessees agree to furnish to the lessors or their agents, at all times, ingress into and egress from the said workings and all of them, and to give the use of any hoisting apparatus for such ingress and egress to the lessors or their agents;

The lessees shall do all work on the said ground and underneath the surface thereof in a good and workmanlike and minerlike manner and fashion for the best advantage of the property as a workable mine;

If at any time during this lease the lessees shall be in position, by reason of their operations, to ship as

much as fifteen hundred tons per month of ore, then the lessors shall have the privilege, if they so desire, to place some competent miner on the ground as an inspector of shipments for the lessors, and such inspector shall have the right to take samples and in otherwise care for the interests of the lessors, and the reasonable wages of such men shall be borne and paid one [158—100] half by the lessors; one half by the lessees;

A failure to keep strictly any of the provisions of this lease on the part of the lessees shall work a forfeiture of all rights of the lessees in the lease, as also shall it work a forfeiture of all rights in the option to purchase, hereinafter set out.

Time is strictly of the essence of this contract of lease in all its conditions, as well as of the essence of the contract of option hereinafter set out; and in the event of any such failure the lessees agree to surrender the premises and give peaceable possession to the lessors or their agents of all of the property hereinbefore set out.

And for and in consideration of the sum of \$1.00 and other valuable considerations, to wit, the covenants hereinbefore set out, and the payments hereinafter to be made, the lessors do agree, for themselves, for their heirs, executors, administrators or assigns, to sell and convey, by good and sufficient bargain and sale deed, unto the said lessees or their heirs, executors, administrators, or assigns, the said Elvina quartz lode mining claim, unincumbered, for the full sum of 'One Hundred and Fifty 'Thousand Dollars (\$150,000.00)) to be paid by the lessees at the Miners

Savings Bank & Trust Company bank in Butte, Montana, at or before the following times and dates:

The first payment is of \$10,000.00 and must be paid at the said bank on or before the 31st day of August, 1913; the second payment is of \$10,000.00 and must be paid at the said bank on or before the 30th day of November, 1913; the third payment is of \$20,000.00 and must be paid at the said bank on or before the 28th day of February, 1914; the remaining balance of the purchase price, to wit \$110,000.00 must be paid at the said bank before the termination of this lease either be forfeiture, as hereinbefore set out, or failure to keep the [159—101] covenants or any of them binding on the lessees, or by the lapse of time set forth in the said lease, to wit, the 31st day of August, 1914.

It is, however, agreed that the royalties and all of the same shall be applied to the reduction or payment of any of the payments hereinbefore set out, except the first payment. None of the royalties shall in any wise be deemed to apply on the said first payment, due on or before August 13, 1913, at all.

All of the covenants and agreements set forth herein inure to the benefit of and are binding upon the heirs, personal representatives and assigns of all parties hereto.

And in all features of this contract, both lease and option, and in all payments to be made, and as to each and every installment, time is of the essence, and if any installment or installments be not paid within the time or times hereby limited therefor, all previous installments shall be and remain the prop-

(Testimony of Charles D. McLure.)

erty of the lessors and the mining claim shall remain their own, unaffected and unincumbered by this contract.

The lease and option are co-terminus.

WITNESS THE HANDS AND SEALS of the parties hereto this 17th day of July, 1912.

(Signed) ROD D. LEGGAT,
CHARLES D. McLURE,
ERNEST D. ANDERSON,
P. ANDREW SLATTENDALE.

[160—102] The WITNESS.—When Rod Leggat returned from the sale that morning I offered him my check. I said to him, “Rod, if you want a check for this I will give you my check for it” and he says, “Oh, it is not necessary at all until the sale is made, and if it is not made then I will deed back to you with the exception of that half interest in the Elvina.” I say Mr. Leggat often between the date of the sale and the same day of the following year, say him very frequently, almost every month, there in Butte, I don’t recall every month, but I say it ran through almost every month, it didn’t escape over one or two and sometimes I saw him twice a week and sometimes three times a week, depending entirely on the state of my business. If I was in Butte, the first thing I would do would be to call up Mr. Leggat, and invariably he would be down—that would be in the morning, I would not go down if it happened to be at night, but of course in the morning, and in the mornings we would generally spend them together— we were pretty good comrades.

(Testimony of Charles D. McLure.)

About our social relations, you might say we were friendly, more than socially, I don't think there was much sociability connected with it but was friendly. Sometimes we would go to the theatres together, and sometimes we would take the car and ride out to the lake, and sometimes we would ride out to the gardens, go out there and spend a little time more for the ride than anything else. Whenever I was in Butte, we two were pals, and almost continuous companions; unless we were down at the Finlen with three or four more, all of us would be together. During the year before the expiration of the time for redemption, almost every time we would meet we would be sure to speak about this property. I knew it was on his mind and it was in my mind, and I think both needed the money and both anxious to have a sale consummated and get the money. By reference to a sale consummated [161—103] and getting money, I am speaking about the Eastern, the Bland and the Ouichita, the same old transactions that Capt. Sanders was speaking of when he was on the stand to-day. I was in Butte between the 26th day of May and the 1st day of June of last year.

Q. Did you have any conversation with Mr. Leggat about this proposition then? A. Yes.

Q. You may state to the Court what that conversation was, in substance.

Mr. SCALLON.—We object to this as incompetent, and as not being the best evidence, and also as immaterial.

The COURT.—The objection is overruled. If it

(Testimony of Charles D. McLure.)

is entitled to no weight it will be given none in making up my final decision.

To which ruling of the Court counsel for the defendant duly excepted.

A. I remember of coming to Butte, and I think I telephoned Rod that I was coming over, and we were together for several days, and finally one evening we were sitting together and we were talking about the matter of this deed, and I said to Rod then "Within a day or so you will give a deed, and I want an understanding about it. If the sale is made will you make that deed over from Wolvin and Hayes to me?" and he said "Yes" and I said "In case it does not go through will you make it to me, and he said, "Certainly"; that was a short time before the limitation ran out. By limitation I mean what you call the redemption. I told him then, "If you want a check for that, I have got one for you" but I had forgotten about the five hundred dollars until I was looking through my papers, but of course he would have gotten my check for whatever he had paid out, and I would consider that [162—104] now as far as that is concerned. I had enough money on hand at that time to have paid a thousand and four dollars and the interest at the rate of eight per cent from June 1st, 1914. I know my check would have been good for that amount. I can't say how often in the last fifteen or eighteen years Mr. Leggat visited St. Louis, Mo., but when he did come he would generally let me know that he was coming, and I think he did on every occasion until this last winter, last winter.

(Testimony of Charles D. McLure.)

He used to always have his mail sent to my office, when he was there on these visits, and he would come there when he would come to town; he would come to my office for the Butte papers, the Butte Miner and the Standard, he took both of them, and we invariably mailed them to him if he did not come after them; that was the order that was left with Mr. Jesse D. Mellor. I would not say how many times he was in St. Louis in the last fifteen years, but I know he was there several times; I don't know if it was five or three, but when he was there we almost invariably spent our evenings together, and would go to the theatre and other places; I know I remember once when we went out together to lunch, it happened to be on election day, and he thought it was quite a joke from the fact that he couldn't find any place to get a glass of beer.

Q. When he came this last winter did he get his mail at your office?

A. When I left there, I think it was in October, Mr. Leggat had been sick, and I came to Butte, I think it was on the 10th, I let Rod know I was coming and I says, "Rod, come on and go to St. Louis with me," I says, "Get into a lower altitude, go where your circulation will be better and spend the winter down there."

[163—105] He had been quite ill, I don't know what it was, I don't know whether it was apoplexy or not, but anyhow he had been quite ill, and he said, "I can't go now, because I have got some things to do at the house in fixing up the heirlooms" and he had to

(Testimony of Charles D. McLure.)

fix up the water, and I said, "Well, Rod, I will wait for you a couple of days if you will go," and I said, "You can travel with me," and he said, "Well, I will see," and I waited two days and he said he could not go, and I went to St. Louis and I think Mr. Leggat—about probably a week after I came there there was an envelope addressed to him came there, came to my office, and I said to Mr. Mellor, "Rod must have been in town, has he been to the office?" and he said, "No" and I said, "Call up and see if Mr. Leggat is in town."

Col. Butler is a brother-in-law of Mr. Leggat, so I went up and I called Mr. Butler, and I says, "I heard Rod is very sick" and I called him up and I found he was out, and the letter was mailed up to him, and these papers were then mailed to him several times. While he was there he came down to the office, came down and took lunch with us, came down with Mr. Butler in the automobile and then he would come over to my office.

Q. Now, Mr. McLure, in November of this last year, 1914, did you commence any negotiations to sell what you call the Butte property, which is here involved in this suit?

A. Why, I told Rod when I left here that I was going to try to raise some money, I said I needed it, I wanted to get straightened; I said "I can't wait any longer," I says, "You have got your money and I need some money." By that I meant his quarter interest. I know at that time that he had got his money for the Eastern, he got his money; in fact, my

(Testimony of Charles D. McLure.)

authority was [164—106] Mr. McQueeney. He said he had taken an option, and I says "I am going to sell, but I had to raise some money in St. Louis at that time." That is the reason I wanted him to go to St. Louis, in case I had to make out any papers he would be there, and he told me he had to stay on account of fixing up his house and fixing things up around there, and I didn't know whether he would really go back or not, but of course I was going to St. Louis; when I left here I went to Mr. Templeman and I told him I wanted to sell the property and see if he had a chance to sell it. That is John L. Templeman. I went to St. Louis and Mr. Leggat came there and we were together more or less and finally I wrote Mr. Templeman and asked him what was the result, and he told me that there were several parties on the string inquiring about it, but nothing definite, but he did not think there was much show, and I told Mr. Leggat about it and he says "Why, I guess if you will wait long enough, maybe the Butte & Superior will take it up yet," and I waited for some time and finally I wired Mr. Templeman and asked him if there was anything doing, and he wired back and asked me what was the lowest cash price I would take for the property, and I sent word out to Mr. Leggat and told him, and it was some little time before I got Mr. Leggat. I called up Col. Butler, and it resulted finally in making connection with Mr. Leggat, and he came down to the office and I says, "Rod, I have about concluded to offer the property for one hundred thousand dollars." That was the

(Testimony of Charles D. McLure.)

interest in the four of them and the bond due me would be one hundred and thirty-five thousand dollars; that is, if the sale was made to the Butte & Superior Co., and I wired Mr. Templeman and Mr. Templeman replied to that that there was nothing doing, or something to that effect. Mr. Leggat's reply to that was, he says, "Charlie, you are getting pretty low on it, you have come [165—107] down a good deal," and I says, "Rod, I will be pleased to get that," and I says, "If they accept it I will expect you to make a deed," and Rod says, "Certainly, I will make a deed." This was just after Christmas, along in the first part of the winter; it was just after Christmas that the first property went, and the hundred thousand dollars came along a little later. This was last Christmas that I speak of. The last time he asked for the price was some time in February.

Mr. MAURY.—We will now offer in evidence check given by Charles D. McLure on August 10th, 1912, to R. D. Leggat for five hundred dollars.

Check received in evidence without objection and marked Plaintiff's Exhibit 21, is as follows:

**[Plaintiff's Exhibit 21—Check, Charles D. McLure,
August 10, 191—.]**

"Butte, Montana, Aug. 10, 191—. Mo. 13.

STATE SAVINGS BANK.

Pay to the order of R. D. Leggat \$500.00, Five Hundred and 00/100 Dollars.

CHARLES D. McLURE."

Endorsements:

"R. D. Leggat. Paid State Savings Bank, Aug.

(Testimony of Charles D. McLure.)

11, 1912. Butte, Mont."

5 o'clock P. M. Case continued to June 22, 1915, at 10 o'clock A. M.

Tuesday, June 22, 1915, 10 o'clock A. M. case resumed.

CHARLES D. McLURE, direct examination continued.

(By Mr. MAURY.)

Q. How long did you say you had been a citizen of Missouri?

A. I went right to St. Louis—well, since 1881.

I was residing there when this suit was commenced. I [166—108] was there when this suit was commenced. The loan of five hundred dollars to Mr. Leggat of which I spoke yesterday was made by a check, that is the check there. That is the check which I delivered to Mr. R. D. Leggat. The signature on the back of the check is the signature of Mr. R. D. Leggat. It came back to me through the ordinary course of business from the bank. That is the check, marked Plaintiff's Exhibit 21, which has been introduced in evidence. I received another letter from Mr. Leggat on April 11, 1910, concerning the Eastern. That letter is in Mr. Leggat's handwriting.

Mr. MAURY.—We offer this letter in evidence and ask that it be marked Plaintiff's Exhibit 22.

[**Plaintiff's Exhibit 22—Letter, Rod D. Leggat to
C. D. McLure, April 11, 1914.**]

Exhibit 22 received in evidence without objection and is as follows:

“Butte, Montana, April 11, 1914.

Mr. C. D. McLure,

St. Louis, Mo.

My dear Charlie:

Yours of the 8th just to hand so will drop you a line or so more.

When Mr. Lucas was here he asked me to get what information I could as to what the ‘Clarks’ or the Elm Orlu zinc ores were being handled at. Mr. Will A. Clark, Jr., was here the last of the week from California, and I asked him direct if he could or was willing to give me any information as to their handling of the zinc ores from the Elm Orloo. He stated that in their plant at Butte Smelter they were saving it to a very high per cent and successfully. Also said that any information as to the working of the Elm Orloo ores he would gladly furnish to you or the Granite B. Met. Co.

I heard of a plant at Dallas, Texas, firm name ‘Sutton Steel & Steel’ who worked 3 car of zinc ore last fall from the Butte [167—109] & Superior (or Blackrock) and the party that took it claimed they done it very successfully. Why not write them or investigate what they can do. It will do no harm to.

I don't think that the B. & S. zinc ores that are being worked at Heinze's concentrator at Basin are a

success, for a party tells me that often the ores are run through twice. Some friction among bosses.

B. & S. people made a 5% payment on the Daniel Quilp on the 1st of April, had option at 240,000.00. Also made some payment on the Damarak, adjoining property, option on both properties seems for two years. They have also option on 'Deadwood' at 150,000.00 and the 1st 5% payment is to be paid on 1st of May. All the deeds are in escrow at 1st Nat. Bank.

The Deadwood is the claim that I saved a one-sixth interest for the widow and heirs of J. D. R. Foster. Out over \$200, but I caught some rogues so I'll get Nit.

I have not been approached by any of the B. & S. people as to the Eastern. Can't tell why. Guess they think that Charles D. McLure ain't an easy mark.

I hear that Mr. A. B. Wolvin, the president of Butte & Superior is expected here along about the 15th. As I met him a year or two ago I will try and rub up against him again, and I assure you I will be prudent.

I will have to go to Idaho for I have been running a 500-ft. tunnel for a very promising surface prospect of gold quartz. Last advices said the formation in face of tunnel was very much mineralized and much more water. I deducted that they were near the ledge, as the 'crow would fly' only about three miles from the Big Strike on the south fork of the Clearwater, or ten mile district. I enclose clipping

just received. Please return it to me after reading.

[168—110] I can't just say when I will go, for I don't want to miss seeing you when you do come. I am not going to work the place ground this summer, but will have to protect it. It was so late when I got hold of 4/11 four-eleventh interest in the property that it was impossible to get materials in over the bad roads. So I will be kind of foot loose this season.

There is a man here by the name of Masters who, I believe, is a mill man, and has often asked for you. I hear that he is a steady, reliable, and as he often enquires about you I thought I would let you know his whereabouts.

With best regards and good wishes,

I am as ever

ROD D. LEGGAT."

The WITNESS.—I received another letter about Jan. 4, 1912. The letter you hand me is the letter I refer to. That is Mr. Rod D. Leggat's signature.

Mr. MAURY.—We offer this letter in evidence and ask that it be marked Plaintiff's Exhibit 23.

Received in evidence without objection, and is as follows:

[Plaintiff's Exhibit 23—Letter, Rod D. Leggat to
Charles D. McLure, January 4, 1912.]

"Butte, Montana, Jan. 4, 1912.

Mr. Charles D. McLure,

Phillipsburg, Mont.

My dear old Friend:

As you will see by the date of this it is time for

me to see that you get the proper New Year's Greeting. May you and yours have a Contented (which means happiness), prosperous and joyous year in this 1912. Sorry you did not wire me so my wife and I could meet you all.

I got the following telegram at one o'clock to-day:

New York, Jan. 4, 1912.

[169—111] Rod D. Leggat, Butte, Mont.

Proceed to get offers on the three claims as negotiated. Am leaving for Butte to-night.

N. MASON RABURG.

Now this means strict business and absolute security. I wrote you to write me your terms of payments. I insist on not less than 10% being paid on deeds in escrow. You did not answer that letter. Will just say that if this deal is made known somebody or outfit will be knocking it. So be wise.

Somehow I have confidence that it may go through, so you will please let me carry it through at your dictation, but be liberal as to terms, for time will be the essence of the instrument.

The claims are the Eastern, Ready Cash and the Meighan, first 200,000, 2d 100,000, 3d 25,000, not less than 10% deed in escrow. Other payments as agreed hereafter.

I think you had better send me a written option in my name for 10 days for the Eastern and I will get Driscoll's and John Johns. You will see by the copy of the telegram that he expects me to have these options. So send it to me by return mail. Then would like to have you come over Monday or Tues-

(Testimony of Charles D. McLure.)

day. This will give you time to get your family settled. We must have absolute secrecy in the matter.

Yours sincerely,

ROD D. LEGGAT."

[170—112] The WITNESS.—I spoke yesterday of Mr. Leggat having told me that he would have been embarrassed at having signed an option. That was the first option that was given to Wolvin and Hayes. Exhibit "A" to which you call my attention, Plaintiff's Exhibit "A," is the instrument to which I referred when I spoke of Mr. Leggat's expressing the idea that he would have been embarrassed. My bill of complaint recites that I was present at the sale. I was not present. I had asked Mr. Leggat to go up there, and I thought that was sufficient and I didn't go.

This is the paper, this option, Plaintiff's Exhibit "A," that Mr. Leggat referred to when he said he didn't care for my check; put him in a position if anything happened to me of him signing that paper without having any authority any more than the confidence that existed between us; he would have had considerable trouble explaining and making good that paper. That was not the only time that took place, that is only one time, but then we would straighten up and substitute for them our deeds, and he has always referred to it several times in the form of negotiations. This Raborg matter was something similar to that; he was the president of the

(Testimony of Charles D. McLure.)

State Savings Bank.

Mr. Leggat did not refuse to recognize my ownership until I had tried to get him several times; he was up at Col. Butler's, and my son had sold the property—practically sold the property; he had a cash offer, which I had accepted, forty thousand dollars for two claims. The claims were the Eastern and the Ouichita. That forty thousand dollars was not for the full claims, just for the interests I owned.

I will now describe in my own way what took place between Mr. Leggat and myself. I tried several times to get him. I had written a note out there, but couldn't find him, telling him about my son telegraphing me (there at Col. Butler's) and [171—113] finally I wrote a note and sent it out there—it might have been my son or somebody else, I can't say, I can't remember this, but I sent a note out there to Col. Butler and asked him to give me Mr. Leggat's address, that there were some papers of importance that I wanted to see him about in Montana, and I got the note back saying, from the nurse, that Col. Butler was quite ill, and that was the reason I got no letters from Mr. Leggat. I had asked for his address, and they went around it without giving me a location. Finally I did find out—he used to come down town—and a friend of mine saw him and reported it to me, so I sent a messenger out then and told him to see Mr. Leggat and to stay there until he did, and Mr. Leggat came down. That was in March, I think, or April of this year, he came to the

(Testimony of Charles D. McLure.)

hotel rooms. I asked him to come to the hotel, because the office was small, and I wanted to see him at the hotel where we could get a nice lunch; he was not very well, and I was not myself very well, so I had *had* room 511 in the Jefferson Hotel, and Mr. Leggat came down there and he missed me first. I think that time in room 511, and I didn't get to see him, and I went to the office; I didn't go right away, but he went to the office and he said to tell me to ask for him. They said I was not in. After I came down I sat down in the rotunda and waited there for a while, but he did not show up at all. About half past eleven o'clock I got anxious and I went down to the office, and I found he had been there and the next day I sent another messenger out there and Mr. Leggat came down and we had a meeting up in the room, 511 Jefferson Hotel. I helped Mr. Leggat into the room and helped him off with his coat and he sat down and I said, "Rod, I have sold the property out, the Eastern and the Bland for forty thousand dollars, and I want you to make a deed." He hesitated for a moment and finally he said, "It is my property." Well, that stumped me completely, and I says, "What do you mean?" And [172—114] he says, "I bought the property and it is my property." Well, I was completely dumfounded at that position, because always before that, never at any time—of course there was never a time when there was an actual sale made—but never before that did he ever intimate that it was

(Testimony of Charles D. McLure.)

not my property and that he would not make a deed if I called on him to do so. I was, as I say, quite surprised and I was a little bit affected, and I says, "Rod, you can't do that thing to me, you don't mean to act that way toward me," and he says, "I am going to hold the property." No, then he says, "I have sold the property," and I says, "Do you mean you have sold the Eastern, the Bland and the Ouichita," and he says, "Yes," and I says, "Who to" and he says, "That is my affair." I says, "What did you get for it," and he says, "That is my business." Well, I stepped up to him and I reached out my hand and put it on his shoulder, and I says, "Rod Leggat, you and I have been friends for thirty years; I have been your friend when you needed one. In all your troubles in your brother's estate"—he had some trouble there in Butte with his brother—"I stayed with you, and I say to you now you are a damn scoundrel, and that judgment was just and everything that Leggat said about you is true, and after I got through talking he straightened up and says, "You are very bitter," and I says, "Not half as bitter as the case requires," and he started up for the door—the room had a bath room and there was a closet on the other side and I stepped in front of the bath room the door to which he was headed, and I says, "Mr. Leggat, go back and sit down." He says, "I won't." I says, "You will, go back and sit down." I said, "Sit down," and he turned and sat down, and I says, "Mr. Leggat, I want to apologize for putting my hands on you, for I realize you are not

(Testimony of Charles D. McLure.)

yourself; I don't believe you could act [173—115] this way if you were yourself; now I want you"—I says, "we are going to have an understanding in this matter, if this means a fight between men that have stayed together for years." I says, "I want you to take this matter with you and in your bed to-night and in the watches of the night come back and give me an answer in the morning," and I says, "Will you do it?" and he says, "yes," and I says, "Will you come to this room 511?" and he says, "yes," and I says, "I will be in this room from ten o'clock to twelve," and I says, "When will you come," and he says, "at eleven o'clock." I says, "If you are not able to come to-morrow, you come up the next day." He got up, and I helped him on with his coat and opened the door, and I says "good-day," and that was the last interview I had with him. The next morning, which was the morning he was to have been down, I got a messenger—I got up early and went down to my office—I got a messenger and I told him I want you to write a note to Mr. Leggat, and I told him, I want you to take your bicycle and go down there, and I will pay you for it, go to Col. Butler's and see Mr. Leggat, and the note was, "Rod, you have promised to be up at my office about eleven o'clock; don't forget it; I will be there." I received a reply from that note that Col. Butler was very sick, which was true, for he was quite ill, from Mr. Leggat. Have you the reply there? Of course, that led me to think that he might be down the next day, so I

(Testimony of Charles D. McLure.)

paid no attention to it, and that night I went back to the hotel, and I found this note, this note from Mr. Cater; I don't know if it is Carter, or not, but anyhow it was a note, and I didn't hear any more of Mr. Leggat for quite a while after that.

The deed that I requested was to be made and deposited in the Miners Savings Bank & Trust Co., at Butte. About any amount that I owed Mr. Leggat, why, of course, I was to pay [174—116] him right down there, but he told me he had sold it and he could not make a deed then, and it left me, of course, in a position like one is where he had to take some action. I was able to pay \$1,004.15 with interest at the rate of eight per cent per annum from the 6th day of June, 1913, until the 7th day of April, 1915. I could get that much cash that day. I can't say whether Mr. Leggat knew of my willingness to straighten up that old transaction in that way or not; I didn't get to the point of making the offer, because as soon as he told me it was sold, that he had sold everything, and said that the property was his, there was no use of my doing anything else than to try and protect myself. I was ready, of course, to pay it, but I can't say that I did or did not offer to pay it, and as I say, I was rather stumped, as I expressed it, I was dumfounded at the position he took. He did not show up pursuant to the agreement. Knowing he had sold it, I went to Mr. Schofield, my attorney, and told him about it, and he says, "the only thing you can do, you can sue for the property here, or you

(Testimony of Charles D. McLure.)

can bring a suit for an accounting," and that suit was instituted in St. Louis. I first learned that Mr. Leggat had not sold the property when this deposition was taken, when he was put on the stand. I was present at the taking of the deposition. And in that deposition the question was asked, if Mr. Murray was there, and he said that Mr. Murray was not there; and the question was also asked if he had sold the property, and he said he had sold his interest and got his money, but that he had the interest he had brought under the judgment, and still had it. And when we found that was the case we dismissed the suit.

Then I wired Mr. Templeman's office and advised to institute proceedings at once to protect myself; I simply wired them to bring suit so as to protect myself against an innocent purchaser. That is the present suit that is now on trial, the suit that was brought. I was in St. Louis, and my attorneys [175—117] were in Butte when that suit was brought.

Q. Now, why did you offer to sell the property for forty thousand dollars, I mean the interests in two of these claims?

A. Well, the first interview I had with him in St. Louis I offered it for one hundred thousand dollars. That interview was in February or March, I can't say, it might have been as early as the latter part of January.

He was perfectly willing to make a deed if I had

(Testimony of Charles D. McLure.)

made my sale. His reply was, you have come down considerable; I hadn't sold the property, I had only a chance to sell, it was simply a negotiation for a sale. That conversation was at my office, I think, in St. Louis, at 821 Security Bldg.

I came down in my price to forty thousand dollars for my interest in the two claims because I was in considerable need; I needed money, and I thought it would be cheaper for me to make that sacrifice than to make it somewhere else. I considered it a sacrifice, and his reply was, "You have come down considerably on the price"—the regular option was one hundred and thirty-five thousand dollars, that was for the three claims, though. It was Mr. Leggat who said "you came down considerably, Mr. Rod D. Leggat."

I have seen Mr. Leggat in Butte several times; saw him on the street and I saw him at the hotel here Sunday night, in the Placer Hotel here in Helena. He was in the rotunda, sitting there smoking with Mr. Alexander Leggat and Mr. Nolan, I believe. I think he came from Butte to Helena Sunday afternoon, last Sunday. I have not seen him this morning. I saw him yesterday, saw him last night up until about half-past eight o'clock. He was in the rotunda talking and smoking.

I am now ready, able and willing to pay Mr. Leggat the sum of either one thousand four dollars and fifteen cents with [176—118] interest at the rate of eight per cent per annum from June 1, 1913, or

(Testimony of Charles D. McLure.)

the sum of five hundred four dollars and fifteen cents, whichever may be adjudged. I am able, ready and willing to pay it. I want to say before I get through that when I reached out and put my hand on Mr. Leggat, that after I had said what I did, I says "Mr. Leggat, I want to apologize for putting my hand on you," when I stepped in front of the door and compelled him to sit down I told him, "I want to apologize again for putting my hand on you." I did it when he was going away.

I hold the monthly accounts rendered me by Mr. Rod D. Leggat with reference to the Elvina Mining Co. and the Chili Co. I offer them now to Mr. Leggat's counsel for inspection. They are here. They show my expenditures in these transactions, roughly the reports of Mr. Leggat.

Cross-examination by Mr. SCALLON.

Q. How long had you been in Butte prior to June 6, 1913, the date of the sheriff's sale, how many days—how many days had you been in Butte prior to that time?

A. I came over, I think, in May; I started to explain it by stating that I was the president of the company, for the Granite Company, and we had something like fifteen or twenty thousand dollars worth of ore, on the morning there was a prospect of trouble and a railroad strike on the electrical construction at Deer Lodge, and also the reported troubles in the Miners Union in Butte; our shipments went from Phillipsburg to the yards at Drummond,

(Testimony of Charles D. McLure.)

and from there to the yards at Garrison and—

I was there first, that is, on the date of the sale. I was in Butte prior to that time. I was going to try to [177—119] tell you for how many days, but I can only locate it by the knowledge of these strikes. I came over several times to see what the situation about the shipments was, and I stayed in Butte a while, and then I went to Deer Lodge and stayed at night, because of the excitement in the streets and I could not sleep, so I went to Deer Lodge at night and came back in the morning. I am talking of last year, in June, June, 1914, June 10, June, 1914.

The date of the sheriff's sale when the property was sold was in 1913, that was two years ago in June. I was over in Butte nearly all the time. I was there, I think, somewhere about the 26th or 27th of May, before the sale. I am inclined to think I came from St. Louis. I was there until along in June, right along. To the best of my memory that was for a period of about two or three weeks. I stopped at the Finlen Hotel. I allowed this matter to go along until the very morning of the sale, the payment, because I really thought that I could redeem it up until the last moment before the sale by the sheriff. I can't tell you just exactly why I allowed it to go until half-past eight on the mornning of the day of the sale instead of going there the day before. I can't tell you exactly why I did that at this time, further than that I knew I had the money to pay it. I had the money at the time. It was in the Miners Savings & Trust Co. bank, and also in Phillipsburg. I don't

(Testimony of Charles D. McLure.)

know whether I told the banking people about it; I may have, I am not sure. I had some money in my name at the bank at Phillipsburg. At the Miners Savings Bank I had about twelve or fourteen hundred dollars. I haven't my book with me. I didn't specify to the sheriff on what bank I would give my check. I would have given it on the Miners Savings Bank & Trust Co. I didn't go the day before and get my check certified, because I thought there would be no [178—120] trouble in taking my check.

Q. Now, when the sheriff refused to take it, did you telephone the bank and ask it to certify the check?

A. I told you that was before eight o'clock.

Q. I know, but between nine and ten o'clock, did you telephone the bank?

A. Why, I came down at nine o'clock and I saw Mr. Leggat; just a little after nine o'clock, and he told me that they would take his check, and he said he would attend to it. I sent for him by telephone. I telephoned myself from the office. I was sitting by the front door in the Finlen Hotel and watching the street, and before he crossed the street I met him on the outer side of the street, and I said to Rod, "They refuse to take my check." I was anxious to avoid the costs of the sale by the sheriff. I did not ask Mr. Leggat to go up and pay the sheriff, pay this judgment, and save the sale and save its costs, because it was about half-past or ten or fifteen minutes after nine o'clock, and I suppose it was because he

(Testimony of Charles D. McLure.)

had told me it had to go to sale, the sale had been advertised, and I don't think that Mr. Leggat could stop the sheriff from selling. I don't know that it is a right of a defendant to bid at any time, or didn't know either. I could have paid the judgment, but I don't mean to say that I could have stopped the sale. If I had gone down with you I presume the sheriff would have stopped the sale. I believe if I had paid the judgment and the sheriff had accepted my check, it would have been stopped, the sale would have been stopped. If he had accepted the money it would have been stopped. I did not ask Mr. Leggat to go and rustle the money for me; he volunteered to do that; he says, "They will take my check. I will attend to it." I did not insist upon his going and paying off the sheriff's claims at once and stopping [179—121] the sale. I didn't ask him to do that. I just told him that they would not take my check, and his reply was, "They will take my check, and I will go up and attend to it." That is exactly what he said, and that was the object and the purpose. He did say he would buy it up for me. I understood that the sale was going to take place—if you understand, a part of that property belonged to Mr. Leggat and never was in my name.

I don't think I endeavored to get him to pay this judgment so as to stop the sale and avoid these costs. I don't think I endeavored to do that either, because some of the costs were already incurred, and Mr. Leggat knew what my responsibility was, and he

(Testimony of Charles D. McLure.)

said he would pay the debt for me, and he said he would give his check and pay it up. At that time he told me he would pay it for me. That was equivalent to saying that the sale would be allowed to take place. I did not object to that. I did not ask him to bid it in for me; he volunteered to do it. He says, "They will take my check." As to why I was willing to allow the sale to take place and incur these extra costs, I can't say anything more than I supposed the situation was satisfactory to me; I don't know what the costs would have been; but if I had employed an attorney to go there it would have cost me as much in attorney's fees as it would for sheriff's fees. I would have gone to the sheriff's office at half-past eight in the morning for the purpose of saving the costs. I had not figured out the costs. I did not ask the sheriff how much the costs would be; I expected it certainly would have cost us something. I had been in business for a long time and I had some experience in sheriff's sale before. As to bringing suits, I don't think I ever sued more than one man that I remember of.

[180—122] I saw Mr. Leggat in St. Louis this year after his illness in Butte, after he had that stroke that I spoke of. I do not know that he was most of the time there in St. Louis under the care of a nurse. I went out to see him, and he was not under the care of any nurse. I saw him at Mr. Butler's place. That was soon after he came there. It was in October, I think, probably November, but soon after I first learned

(Testimony of Charles D. McLure.)

he was there, and when I learned that he was there and he didn't come to the office, I imagined he was sick, because generally he came to the office, and I went out and called on him; that was early in the fall, and he was not under any nurse at that time. I think I know that, because if he was he was down town very frequently; I know I took dinner with him two or three times; and he would read the papers that I received.

When I first left here in October I told him I was going to try to raise some money and I wanted him to go to St. Louis, and right at that time I had approached Mr. Templeman to see if he couldn't sell the properties. That was as early as the 10th of October. I think it was in February that I told him about the price and he said that I was coming down in my price. I told him that I had put a hundred thousand dollars on it. That was not for all of the properties, just two of the interests—no one hundred thousand was for all three of them, for the Bland, the Ouichita and Eastern interests, one hundred thousand dollars cash for these three interests; that was it. I did not put a price of forty thousand dollars on the Eastern. My son came out here and he was offered forty thousand dollars cash and he wired me about it and that was what I finally did accept for the Ouichita and the Eastern. Not the Bland and not the Elvina, just the Eastern and the Ouichita. When I told Mr. Leggat [181—123] I put the price of one hundred thousand dollars on it, he sim-

(Testimony of Charles D. McLure.)

ply said "You have come down considerable" and I told him at that time "You have got your money"—he told me he had sold all of his. The first I heard of it was from Mr. McQueeney, and he told me that he had got his money, or had hypothecated his interest, and he got all his money; I suppose he told me that a half a dozen times in 1914, last year. I understood that he had the money from Stewart White. He was an old friend of his. I had never met Mr. White but once, but he was an old friend of Rod Leggat's. My understanding was that Stewart White advanced him the money on the property, I can't say whether he did or not, but from his statement to me he did. I don't know about his having deeded this property to Stewart White on account of this advance, I didn't ask him. I understood that he had hypothecated it to Mr. White; that was as I understand it. It occurs to my mind at this time it was before the final failure of the Butte & Superior Co. to take the property, but the option was still in existence and I thought from what he said that he hypothecated the payments that were to come to Stewart White. I never asked him whether he was to deed the property to Stewart White later on. I never knew that he deeded to White until after the suit was started, and then when I made up my own records I found that the records showed it was deeded to White. I didn't understand him to say that he had sold the property to the Butte & Superior Co. or Wolvin and Hayes, or any of these people. I don't think he told me that.

(Testimony of Charles D. McLure.)

In this interview in room 511 of the Jefferson Hotel, when he told me he had sold the property, he referred to the whole property. I asked him plainly "Have you put any bonds on it?" And he says, "I have sold it." I says "Who to?" and he says "That is my affair." "What did you get for it?" "That is my business." [182—124] Then it was I put my hand on him and I says, "Leggat"—and he straightened up. That was about all. I am sure that was all that happened, and I didn't take it off either. He did not give way under it, he straightened up. I don't think he was as sick then as he is now, but I think he is as well now as he will ever be, and as well as I am to-day. He does not speak as fluently as I do, but he hears better than I do. My deafness is not an old-time affair, it came on me last year. I think I was at Col. Butler's room two or three times in the fall and winter.

Q. Was there any discussion of the price between you and him, I mean on the price you were putting on the property in these conversations in St. Louis when you told him first that you had put a price of one hundred thousand dollars on it?

A. I don't think there was from the fact—I think that telegraph from Mr. Templeman read "I have two parties interested." He said "There are two parties here that are interested, what is your lowest cash price" and my reply was "One hundred thousand dollars." In my interview with Mr. Leggat there was no discussion between us about the price,

(Testimony of Charles D. McLure.)

nothing more than that, because I had no option, and no chance of making a sale, and he simply said "I came down on my price." That was before I had wired Mr. Templeman.

Q. Did you explain to him why you were selling this property, or why you were willing to let it go at that low price?

A. Well, he told me already that he had sold his a long time before that and he had got his money out of it, a year before that.

He had got his money in the Eastern. There was no other under contemplation of sale in which he was interested. That hundred thousand dollars was for all three of the properties, that is, the Bland, the Eastern and the Ouichita. The Elvina [183—125] interest has never been under consideration. It did not include the Elvina. I think you may see that telegram I sent to my attorney here to bring suit, I have got it here. If I haven't I will bring it to you. I had talked this matter over with Mr. Schofield before bringing suit. I think he is familiar with the whole situation, I mean learned about that. He has been in my office for ten years. I mean by that, he has been employed there. He has not an office in the same building as mine. But I did tell him all about these transactions between myself and Mr. Leggat. It was not necessary to tell about each conversation with Mr. Leggat, because Mr. Schofield and Mr. Mellor are cronies and take their lunches together every day, and he is my attorney and Mr. Mellor is my sec-

(Testimony of Charles D. McLure.)

retary. I don't think I ever told Mr. Schofield the interview with reference to this matter of the sheriff's sale and the purchase of the property by Mr. Leggat. He had no information, except the information to bring this suit, that Leggat had sold the property. I went to him to bring the suit. I told him all the circumstances, that Leggat had said he had sold the property. I think I read the complaint that he drafted.

Q. Now, calling your attention to the allegations of that complaint, I will read this to you, unless you prefer to read it yourself?

A. No, you go ahead and read it, you can see better than I can.

Q. Your complaint says, "This plaintiff and said defendant has been in negotiations for the sale of said properties and the interests of plaintiff and defendant, respectively, thereto, and by and through the interventions of said defendant, said properties were bonded to certain persons in Montana, whose names are now unknown to plaintiff, at and for the following prices, to wit, for the full title to the said Eastern lode [184—126] mining claim the sum of two hundred thousand (200,000) dollars; of which plaintiff was to receive the sum of one hundred fifty thousand (150,000) dollars, and said defendant the sum of fifty thousand (50,000) dollars; and for the interest of this plaintiff in said Ouichita lode mining claim the sum of twelve thousand (12,000) dollars; that said negotiations were conducted by the said

(Testimony of Charles D. McLure.)

defendant at the instance and request of this plaintiff and such steps were therein had that there was paid to this plaintiff on account of, and as earnest money on the purchase of said interest of this plaintiff in such property, the sum of forty-five thousand (45,000) dollars and to the said defendant, on account of his interest in the said Eastern Lode mining claim, the sum of fifteen thousand (15,000) dollars, and that thereafter said sale was abandoned by the prospective purchasers thereof, and the bonds theretofore given cancelled and for naught held." Do you remember of reading that allegation?

A. Well, that is no different from what I testified to here.

Q. Do you remember of reading this paragraph? "Plaintiff further states that at the request of the said defendant and in furtherance of resumption of said negotiations then being conducted by plaintiff and defendant for the sale of said mining properties and the interests of the parties hereto, respectively, the full title to the interest of this plaintiff in and to said properties was placed in the name of said defendant so that upon completion of negotiations for the sale thereof the title thereto might be quickly and effectively passed to the prospective purchasers thereof, with whom said defendant and this plaintiff were negotiating for the sale of same." Do you remember that?

A. That is practically what I testified to, I don't think it [185—127] differs very much from my testimony.

(Testimony of Charles D. McLure.)

I think I read that statement all right, I am not sure, but I think I did; but that is the fact whether I read it or not.

Q. Then in the next allegation you say "Plaintiff further states that at the time of placing the title to the interest of this plaintiff in the name of said defendant, as aforesaid, this plaintiff had full confidence in the integrity of the said defendant, and in his assurances and promises that the interest of this plaintiff in said property would be held by the defendant for the plaintiff, and fully accounted for to plaintiff on any sale thereof by defendant, if and when this plaintiff requested sale and disposition."

A. Well, I think that is my testimony here.

I think I read that in the complaint. Up to the interview I told you of at 511 Jefferson Hotel, I had not supposed for one moment that he had sold it. It was after that that I brought suit in St. Louis. He told me he had sold the property. When he testified in court that he hadn't sold it I realized that I had no grounds for suit, and the suit was dismissed for the reason that the Court had no jurisdiction of the property, and the suit had to be brought here.

Q. Meanwhile did you hear from your Montana attorneys as to whether they brought suit or not?

A. I don't know as to that, as I say, when Mr. Leggat did not come down to meet—the understanding we had had, he was to come down that day, and if he was not able to come that day he was to come the next day, and when he didn't come I realized at once

(Testimony of Charles D. McLure.)

—I had had trouble enough to find him—I had to protect my interests some way or other.

I am not sure that I was informed by my attorneys by [186—128] telegram of the bringing of the suit, but I am rather inclined to think that I asked them to answer, but I don't know whether it was that day that I got the answer or not, but I got an answer saying that suit had been commenced and some papers from the record showing the proceedings, or notice of the suit. A *lis pendens*, I mean. I understand what a *lis pendens* is, as the lawyers call it. I do not think I heard of the bringing of the suit before I took the deposition of Mr. Leggat in St. Louis. I am pretty sure I did not. It may have been possible that as soon as I got his deposition, that very day the deposition was taken in St. Louis, that very night, a wire may have been sent to Montana to bring the suit. My impression is that I telegraphed my attorneys in Montana after the deposition of Mr. Leggat was taken. I may have been possible, the paper you have there was a copy that was first made, and the suit was finally altered and there is some minor difference between the copy you have and the copy that was filed. Coming back to the time of the sale, that is two years ago in June that we have been speaking about, I am not sure that any member of my family was stopping with me at the hotel. It is possible one of my boys, or one of my daughters was there, I don't know. I have no positive recollection about this, but I am inclined to think that my son,

(Testimony of Charles D. McLure.)

William, was there, but I am not sure, but I am inclined to think that. That was the young man who was here on the stand yesterday. I have four sons out in Montana. I told you, speaking of last year, that I came on to Butte in connection with the shipments from the Granite Mountain mine and that occasionally I stopped at Deer Lodge. I think it was in May or June. I think I came over—my impression is I came over about the 15th of May, and I may have come here to Helena to see Frank Smith [187—129] and gone back to Butte and there in Butte there was soap-box speakers down there, and big crowds on the street, so I went down to Deer Lodge to sleep, came down to Deer Lodge and slept at the hotel and would go back the next day to Butte. I slept at the Deer Lodge Hotel. I slept there several times; I made a trip down there in preference to sleeping in Butte. I do not think I had my family at the Finlen Hotel at that time. I didn't bring the Finlen Register, I suppose that would show. I was going backward and forward from Butte, between Deer Lodge, Butte and Helena. I was at the Placer, or the Finlen or the Deer Lodge Hotel.

To get back the property, I want to pay what is just. I assume that Mr. Leggat won't question that check, if he does I will pay the full amount that he paid. Now don't misunderstand me, I have no animosity toward Mr. Rod Leggat whatever.

Redirect Examination by Mr. MAURY.

The WITNESS.—Mrs. McLure's age is sixty-

(Testimony of Charles D. McLure.)

eight, I think. Last fall, when I went to St. Louis, from Montana, I am not sure whether I left Butte on the tenth or twelfth, but it was either one of these days, I went to Mr. Leggat and asked him if he would go to St. Louis with me, and he says, "I can't go, I have got some things to do here" and I said, "I will stay two days if you are able to go then, and you can travel with me, Rod." That, I think, was October 14th, of last year. I am not sure how soon Mr. Leggat followed me, I don't know. I only know the dates roughly by thinking it over. I think the letter for him must have come to the office about two weeks after my arrival in St. Louis. He did not call for that letter, I mailed it to him. Yes, I had some telephone communications with him to know that he was [188—130] there. Mr. Mellor called me up and said if I wanted to see Mr. Leggat at that time. I think that was my first call; I went down to see him. I cannot say how long he stayed there, the last time he was in St. Louis. I don't know. He was down several times; he would come down and we would go out and take lunch together. We did that several times and I think that once we went out to a picture show together. He was there until March or April.

Mr. SCALLON.—Will you look at this paper which I now hand you and state whether that is your signature? A. Yes, sir.

Mr. SCALLON.—I will read it into the record. "Butte, Montana, August 3, 1912. Received from Wolvin & Hayes the sum of fifteen thousand dollars,

(Testimony of Charles D. McLure.)

same being as payment upon a three-quarters ($\frac{3}{4}$) interest in the Eastern quartz lode mining claim covered by option to Wolvin & Hayes." That was your authority for that twenty thousand dollars that was deposited in the State Savings Bank at Butte?

A. Yes, sir.

The money was deposited in the bank there under that escrow agreement. When I deposited the deeds it was turned over to me. I got the money directly from the bank. I didn't get it from Mr. Leggat or through Mr. Leggat.

Mr. MAURY.—We offer in evidence certified copy of the sheriff's certificate of sale on execution, which bears the certificate of the recorder of Silver Bow County, Montana, and the documentary war revenue stamp cancelled. We offer also sheriff's deed under execution, a certified copy, with the proper revenue stamps cancelled.

Sheriff's deed, marked Plaintiff's Exhibit 24, and sheriff's certificate of sale, marked Plaintiff's Exhibit 25, [189—131] received in evidence without objection, and are as follows:

[Plaintiff's Exhibit 24—Sheriff's Deed, June 10, 1914, Sheriff of County of Silver Bow to Rod D. Leggat.]

SHERIFF'S DEED UNDER EXECUTION.

THIS INDENTURE made the 10th day of June in the year of our Lord 1914, between Tim Driscoll, Sheriff of the County of Silver Bow, State of Montana, the party of the first part, and Rod D. Leggat

of the said County of Silver Bow, of the party of the second part,

WHEREAS by virtue of writ of execution issued out of and under the seal of the District Court of the Second Judicial District of the State of Montana, in and for the County of Silver Bow, tested the 14th day of May, A. D. 1913, upon a judgment recovered in the said court on the 18th day of April, A. D. 1913, in favor of Ira T. Wight et al., and against Chas. D. McLure, to the said sheriff directed and delivered, commanding him that, out of the personal property of said judgment debtor in his county, he should cause to be made certain moneys in the said writ specified, and if sufficient personal property of the said judgment debtor could not be found, then he should cause the amount of said judgment to be made out of the real property belonging to said judgment debtor on the 6th day of June, A. D. 1913, or at any time afterwards; and whereas, because sufficient personal property of the said judgment debtor could not be found, whereof said sheriff could cause to be made the moneys specified in said writ, the said sheriff did, in obedience to said command, levy on, take and seize all the right, title, interest and claim which said judgment debtor so had in and to the lands, tenements, real estate and premises hereinafter particularly set forth and described, with the appurtenances, and did on the 6th day of [190—132] June, A. D. 1914, sell all the right, title, interest and claim of the said judgment debtor in and to the said premises, at public auction in front of the courthouse in the City of

Butte in said County of Silver Bow, between the hours of nine in the morning and five in the afternoon of that day, namely at ten o'clock A. M., after having first given due notice of the time and place of such sale by publication according to law, at which sale all the right, title, interest and claim of said judgment debtor in and to the said premises were struck off and sold to the said party of the second part for the sum of one thousand and four and 15/100 dollars, legal money of the United States of America, the said party of the second part being the highest bidder, and that being the highest sum bid for the same, whereupon the said sheriff, after receiving from said purchaser the said sum of money so bid as aforesaid, gave to the said parties of the second part such certificate of said sale as is by the law directed to be given, and a duplicate of such certificate was duly filed by said sheriff in the office of the Recorder of the County of Silver Bow; and whereas, twelve months after said sale have expired without any redemption of the said premises having been made;

NOW THIS INDENTURE WITNESSES that the said Tim Driscoll, the sheriff aforesaid, by virtue of said writ, and in pursuance of the statute in such cases made and provided, for and in consideration of the said sum of money, to him in hand paid as aforesaid by the said party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, sold and conveyed and confirmed, and by these presents doth grant, bargain, sell, convey and

confirm unto the said party of the second part, and to his heirs and assigns forever, all the right, title, interest, and claim which the [191—133] said judgment debtor, Chas. D. McLure had on the said 6th day of June, A. D. 1913, or at any time afterwards, or now has in and to all that certain lot, piece or parcel of land, situated, lying and being in the city of Butte, county of Silver Bow, State of Montana, and bounded and particularly described as follows, to wit:

The Elvina quartz lode mining claim situated in Silver Bow County, Montana, lot No. 258, situated in section one and two, township three north, range eight west in Silver Bow County, Montana, patent for said mining claim being of record in Book A of United States Patents at page 309.

The Eastern quartz lode mining claim, Survey No. 1230. The Bland quartz lode mining claim, Survey No. 1160, the Ouichita quartz lode mining claim, Survey No. 1229, all in Silver Bow County, State of Montana.

Together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining, to have and to hold said premises, with the appurtenances, unto the said party of the second part, his heirs and assigns forever, as fully and absolutely as the said sheriff can, may or ought to, by virtue of the said writ and of the statute in such case made and provided, grant, bargain, sell, convey and confirm the same.

IN WITNESS WHEREOF the said sheriff, the

said party of the first part, has hereunto set his hand and seal, the day and year first above written.

(Signed) TIM DRISCOLL,

Sheriff of the County of Silver Bow, Montana.

Signed and delivered in the presence of

HUGH LYNCH.

ANDREW QUILTY.

Acknowledged.

Filed June 11, 1914.

**[Plaintiff's Exhibit 25—Sheriff's Certificate of Sale
of Execution, Dated June 6, 1913.]**

**[192—134] SHERIFF'S CERTIFICATE OF
SALE ON EXECUTION.**

**SHERIFF'S OFFICE, SILVER BOW COUNTY,
STATE OF MONTANA.**

I, Tim Driscoll, sheriff of the County of Silver Bow, State of Montana, do hereby certify that under and by virtue of execution issued from out the district court of the First Judicial District of the State of Montana, in and for the said County of Lewis & Clark, in a certain action therein pending in said District Court, at the suit of Ira T. Wight et al., plaintiff, against Chas. D. McLure, defendant, duly certified and attested to me, under the seal of the said district court, the 14th day of May, A. D. 1913, and to me as such sheriff, duly directed and delivered; whereby I was commanded to make the sum due on the judgment in said action, for damages, with interest and costs, and accruing costs and expenses of sale, to satisfy said judgment out of the real property in

the above-named county belonging to Chas. D. McLure, the said judgment debtor; and that on the 6th day of May, A. D. 1913, at 10 o'clock A. M., at the courthouse door, in Butte City, in the said County of Silver Bow, I duly sold at Public Auction, according to law, and after due and legal notice, to Rod D. Leggat, who was the highest bidder therefor at such sale, for the sum of one thousand and four and 15/100 dollars, lawful money of the United States, which was the whole price paid for the property as sold, all of that certain real property lying and being in the above-named County of Silver Bow and described as follows, to wit:

All the right, title and interest of the defendant in and to the following described real property, to wit:

The Elvina Quartz lode mining claim, situated in Silver Bow County, Montana, lot No. 258, situated in secs. one and two [193—135] township three north, range eight west, in Silver Bow County, Montana, patent for said mining claim being of record in Book A of United States Patents at page 309.

The Eastern Quartz lode mining claim, Survey No. 1220.

The Bland Quartz Lode mining claim, Survey No. 1140.

The Ouichita Quartz lode mining claim, Survey No. 1229, all in Silver Bow County, State of Montana.

And I do further certify that the above-named property was sold in one lot or parcel as herein de-

scribed, after offering each claim separate and receiving no bid, and that the said sum of one thousand and four and 15/100 dollars, lawful money of the United States, was the highest bid made and the whole price paid therefor, and that the same is subject to redemption at any time within twelve months from date of said sale, pursuant to the statute in such cases made and provided.

Given under my hand this 6th day of June, A. D. 1913.

(Signed) TIM DRISCOLL,
Sheriff of Silver Bow County, Montana.

By Hugh Lynch,
Deputy Sheriff.

Filed June 6, 1913.

Judgment recovered on the 18th day of April, 1913.

Mr. RASCH.—I understand that this case was set down for hearing on this date for the purpose of introducing proof on behalf of the complainant, and that the proof on behalf of the defendant may be taken next October, and so far as we know now that is all the proof available at this time, and particularly all the proof that will be adduced on the part of the complainant, and that the case may be continued to some time in October, suitable to your Honor, for the purpose of taking the proof of the defendant, and for such other proof on the part of the complainant as may in the meantime be [194—136] decided upon. We have no objection to the plaintiff offering further proof.

The COURT.—If there be no objection the case

may be reopened on the part of the plaintiff at that time.

Case continued to October 21, 1915, at Butte, Montana.

Monday, December 6th, 1915, ten o'clock A. M.

Before Hon GEO. M. BOURQUIN, Judge.

Mr. MAURY.—We offer in evidence now a certified copy of the execution in the case of Wight & Pew versus Charles D. McLure, from the district court of the First Judicial District. We have a certified copy, and there is a return on the execution too.

The COURT.—It will be admitted under the usual rule.

(Paper received in evidence, marked Pltfs. Ex. 1.)

Mr. MAURY.—We rest.

[Testimony of Hugh Lynch, for Defendant.]

[195—137] HUGH LYNCH, a witness called on behalf of the defendant, having been first duly sworn, testified as follows:

Direct Examination by Mr. NOLAN.

The WITNESS.—My name is Hugh Lynch. At present I am timekeeper. I reside in Butte. In June, 1913, I was chief clerk to the sheriff in this county, that is Sheriff Driscoll. I conducted the execution sale in the suit of Wight & Pew against Charles D. McLure. I don't remember the date. At that time I had an assistant in the office, Mr. Luke Noonan. I know Mr. McLure. I do not remember whether or not he came to my office on the 6th day of June, 1913, concerning this sale on execution of Wight & Pew against him. I was there upon that date. I opened the office at nine o'clock every morn-

(Testimony of Hugh Lynch.)

ing. Either myself or Luke Noonan opened the office of the sheriff every morning. We were the only ones that knew the combination of the safe where the books were kept. The sheriff's office itself was opened by either myself or my assistant, Mr. Noonan. I conducted this sale on execution. I remember that Mr. Leggat bid the property in. Nothing whatever was said at the sale by Mr. Leggat concerning his bid. Nothing was said to me by any person concerning for whom or for what purpose Mr. Leggat was bidding. Mr. McLure did not come to my office on that morning and offer me a check. I didn't see the gentleman around the office at all on that morning. I made out the certificate of sale. I did that immediately after the sale. I had to make out two of them and generally take—not being very handy with the typewriter, I don't know whether I made it out on the typewriter, or whether I wrote it out—had to write out a copy [196—138] and give one to the one that bought the property in, and also one for the clerk of the Court's office. After Mr. Leggat bid the property in, he paid for it, paid the amount of the judgment. Then I issued him a certificate of sale. I don't remember whether I issued him the certificate of sale right then or later on, I couldn't say; I think it was the same day, anyway; I don't exactly know the hour. I can't say whether he waited for the certificate or not.

Cross-examination by Mr. RASCH.

The WITNESS.—I was chief clerk to the sheriff at that time. I had been chief clerk prior to that

(Testimony of Hugh Lynch.)

time from the time Sheriff Driscoll took office, the 6th day of January, I think it was, 1912. I continued to be in that position up until, I think it was the 6th day of October, that we left the sheriff's office, the 6th day of October, 1914. I always conducted the sales whenever there was a sale to be had. I conducted a great many sales prior to the 6th day of June, 1913, and a good many since then while I was clerk. If I remember rightly I think there were five claims or four claims that were levied upon that I sold at that time under this judgment against McLure. I couldn't state which claim I offered first. The way they were in order on the order of sale, I suppose is the way I offered. I offered each claim separately first. After I offered one of the claims separately I received no bid on it. Then I proceeded to offer the next one. I offered the next one alone. Receiving no bid on that, I offered the next one. After I received no bid upon the first offer that I made on the first claim, I then offered and received no bid on the second one. I did not then offer the two together. [197—139] After I had offered each of these claims separately first and received no bids on any of them separately, then I offered them all in a bunch. I had dealings with Mr. McLure a little bit later than a year previous to that time. Just one deal. I knew the gentleman, knew who he was. Nine o'clock in the morning was when the office was opened. I remember holding the sale at ten o'clock. I stated that I didn't remember Mr. McLure coming there to see me.

(Testimony of Hugh Lynch.)

Q. When did anybody first talk to you about this sale, recently or at any other time?

The COURT.—You mean after it happened, after it took place.

Mr. RASCH.—Yes.

A. Why, I talked with Mr. McLure here one evening.

That may be six weeks or two months ago, somewhere around there. That was not the first time that any inquiry was made of me with reference to that sale. I think Mr. Nolan talked to me a little while before that. It was quite a while ago when Mr. Nolan talked to me about it; I can't remember the time; and I talked to Mr. McLure just about the time this trial was started, I think the first time, over in Helena. I think it was before this hearing commenced over in Helena, which was last June. At any rate it was approximately two years since the making of the sale when the matter was again first called to my attention. As far as I can remember I tell you everything that occurred that morning. I am giving you my best recollection of what occurred that morning, absolutely the truth. If Mr. McLure was up to the courthouse that morning at nine or approximately about that time, he didn't speak to me; there was no proposition made to me, or anything at all, before that sale. I remember Mr. [198—140] Wight, one of the judgment creditors for whom that sale was made, when he came over with the papers; I didn't know the gentleman at all; I wouldn't know him again if I saw him. I couldn't

(Testimony of Hugh Lynch.)

say whether he was present at the sale or not. The only one I remember was Mr. Leggat, being at the sale. Mr. Leggat was the only person that was present at the sale who was interested that I knew anything about. He was the only one interested in the sale that I knew anything about. There were several people going up and down the steps of the courthouse; there usually was when I held sales, but I paid no attention to them; I may have known them, but I paid no attention to them. I recollect and know Mr. Leggat was there; he was the man that bid on the property.

It was shortly after we took office that I had this other transaction with Mr. McLure. He redeemed the same property under—Mr. Noonan was my assistant at that time. When I was called out of the office and anything came in in a civil line Mr. Noonan handled it. I couldn't state whether Mr. Noonan was at the office ahead of me on the 6th day of June, 1913, or not. Mr. Noonan generally got there about five minutes ahead of me; he caught the car down that got him there about five minutes to nine.

Redirect Examination by Mr. NOLAN.

Q. Mr. Lynch, is it usual for—or I mean is it such a circumstance, when you carried on business of selling property on execution, for persons to offer their check for the judgment; is that a common proceeding?

A. It was a common proceeding, provided you called up the bank first and found out they were good for that amount of money; I always found out from the bank first.

(Testimony of Hugh Lynch.)

[199—141] I have no recollection whatever of Mr. McLure offering me a check. He didn't offer me a check.

(Witness excused.)

[Testimony of Luke Noonan, for Defendant.]

LUKE NOONAN, called as a witness on behalf of the defendant, having been first duly sworn, testified as follows:

Direct Examination by Mr. NOLAN.

The WITNESS.—My name is Luke Noonan. I am a miner; watchman now. I reside in Walkerville, Montana. I was a clerk to the sheriff of this county in June, 1913. I was an assistants to Hugh Lynch. I was engaged in that service on the 6th day of June, 1913. I am not acquainted with Mr. McLure that I know of. I don't believe this gentleman here, Mr. McLure, called on me at the office of the sheriff in June, 1913. I couldn't say that he did. He did not call on me with reference to the execution sale of Wight & Pew against him. He did not offer to me to pay the amount of the execution. I don't believe I saw him at the office of the sheriff; I don't believe I ever seen him up at the courthouse. I would get down about nine o'clock in the morning; generally got on the twenty minutes to nine Walkerville car; that would bring me into the courthouse about two or three minutes to nine. Well, as a rule the janitor generally opened the door—around there cleaning up, but I used to generally open the safe myself, if Lynch wouldn't be there I would open it. Either Lynch or myself was the

(Testimony of Luke Noonan.)

[200—142] first one in the office in the morning; generally myself.

Cross-examination by Mr. MAURY.

The WITNESS.—There were fourteen deputy sheriffs, I guess; fourteen and the undersheriff and the sheriff, I think. John C. Smith was the undersheriff on June 6th, 1914. I haven't seen him for three or four months, but I think he is working at the Granite Mountain or the Speculator. The Granite Mountain mine in this county. He was once alderman here in Butte. I think there were, besides him, thirteen deputies. I will tell you in a minute. There was fourteen, and him. Most all of them came in about nine o'clock. I couldn't say where Timothy J. Driscoll, the sheriff, was that day. I couldn't say whether he was there or not. My duties as assitant clerk to Hugh Lynch was mostly looking after the jail book and so on, answering the 'phone, and doing the clerk work when he would not be in the office. I don't think I know Mr. Pew of White & Lew. I don't think I know Mr. Wight. I couldn't say if Mr. Wight was there that day. I had nithing to do with the sale at all; Lynch looked after the sale; he always did look after that kind of work when he was present. I couldn't say whether or not any particular man came in to see me or talk with me during my term of office there; I couldn't say, but I don't believe so. I don't believe I could remember. I had nothing whatever to do with the sale of the property, no, sir, not a thing.

(Witness excused.)

[Testimony of Rod D. Leggat, for Defendant.]

[201—143] ROD D. LEGGAT, the defendant, called as a witness in his own behalf, having been first duly sworn, testified as follows:

Direct Examination by Mr. NOLAN.

The WITNESS.—My name is Rod D. Leggat. I reside in Butte City. I was seventy six years old last June. I have lived in Montana about forty-nine years. I have followed mining and merchandising. I first met Mr. McLure in Helena in '67, just met him. But I didn't see him for several years after that. Since then I have had some business transactions with him in some mines, in '88 in Butte, in the Elvina mine. That is one of the mining claims involved in this suit. In '93 and '94 I was *interested* in Sand Creek, in Madison County, this State, with Mr. McLure. I have been actively engaged in mining since '72 and '3. I have been actively engaged in carrying on mining operations since '73. It is just about a year since I quit carrying on active mining operations; just about a year; I don't think hardly that; I have not done much mining in a year, since I was taken sick, that is in the State of Idaho. Mr. McLure isn't interested with me there. It is twenty years, I guess, since I quit active mining in Butte. During the past twenty years with Mr. McLure I was interested in the Eastern and I thought in the Elvina. I carried on some negotiations with Wolvin & Hayes with reference to the sale of the Eastern. I made the deal with Wolvin & Hayes for the East-

(Testimony of Rod D. Leggat.)

ern. The others interested with me were Charles D. McLure, two-thirds, and Stuart White, one-eighth, and I one-eighth. I mean Mr. McLure three-fourths. In that transaction I made the contract with Wolvin & Hayes. I gave a bond for the—or an option for the whole property, [202—144] and agreed to get the other owners' interests; they would agree to it. I agreed to get the owners at the price I had given the bond at, at two hundred thousand dollars. Mr. McLure and T. Stuart White and myself were paid some money under that option. The money was paid to the State Savings Bank, twenty thousand dollars, the first, and that was segregated, that is, each man got what his interest called for. That was the 20th day of June, 1912. There was a second payment made on that option, forty thousand dollars, on the first day of January, 1913. That didn't complete the payments due from Wolvin & Hayes. I don't remember when it was after that, but I sold my interest to Mr. White. I think it was in June or July, something like that, of 1913. The option was finally forfeited. It was forfeited in 1914. I expect it was January, January 1st. After the forfeiture never had anything to do with the sale of the Eastern; never spoke to the Butte & Superior people about it. I did not speak to anybody else about it.

Coming down to this sale, I purchased at execution sale, on June 6th, 1913, wherein Wight & Pew were the judgment creditors and Mr. McLure the judgment debtor, the interest of Mr. McLure in the East-

(Testimony of Rod D. Leggat.)

ern, Ouichita, Elvina and Bland quartz lodes, the interest set forth in the pleadings. I first say notice of the sale published. I seen it published at the courthouse. I saw the notice of sale. I do not recall approximately when I saw that notice published. I think two or three weeks before it was sold. I attended the sale. Before attending the sale I did not have any conversation or agreement with Mr. McLure concerning my attendance at the sale. I did not see Mr. McLure on the day of the sale. I did not see Mr. McLure before the sale on that day. I did not talk to Mr. McLure by telephone on that day. I made no announcement at the sale as to whom I represented. I [203—145] was representing myself. I did not state to any person at the sale that I was representing Mr. McLure.

I went up to the sale, and I think the sheriff was out on the street, was on the porch, and after a little while he put it up, and he called the different names; there was no bid. He called the different names of the Eastern and the other claims, and there was no bid, and then he put them all up, and I made a bid, for the costs and for the execution, and the costs. After that I went into the office to pay for it. I had to wait until they made the papers out, figure what the costs were. I got the papers. I mean the sheriff's certificate of sale, I got it then; I don't know how long it took, took some time. I never informed Mr. McLure that I would hold these properties that I purchased at the sale, for his benefit. I never stated

(Testimony of Rod D. Leggat.)

to him that I would hold them as a mortgage or security for the amount that I bid at the sale. Mr. McLure never did offer me a check for the amount that I had bid at the sale. He did not offer me a check for the amount on the day of the sale. He never at any time after the sale offered me a check for the amount that I bid and eight per cent interest. I never said to him that upon his payment to me of the amount that I bid at the sale and eight per cent interest, that I would convey to him the properties that I bid in at the sale. About a year before the 6th day of June, 1913, I bid in at sheriff's sale on execution some property of Mr. McLure's. Mr. McLure paid the money for the redemption to the sheriff and I received the money from the sheriff. Mr. McLure paid during the period of redemption, the year of redemption. It was the same property and from an attorney in Helena, John B. Clayberg. Mr. McLure first demanded me to turn these properties over to him on the 29th day of March, 1915, in St. Louis. He was [204—146] stopping, he wanted me to call on him, wrote me to call on him at the Jefferson Hotel, and I went up there. It was sometime in the afternoon, I think, in his own room, and he asked me about—said he made a deal. I said, "What for?" "Well," he said, "for the Eastern," and I said, "What right have you to make it; I own that." And that caused a little fuss. I was very sick at the time. There wasn't much of anything done during the fuss, about that, because I told him

(Testimony of Rod D. Leggat.)

that owned that. Two or three days later Mr. McLure brought suit against me in St. Louis.

Q. I call your attention to a paper which is marked "Petition. In the St. Louis Circuit, June Term, 1915," and ask you whether or not that is the paper or a copy of the paper that was served on you in that suit. A. Yes, sir.

Mr. MAURY.—We might admit that this is a copy. We will look at it. Not agreeing as to its relevancy—that is doubtless a true copy, and it was served on Mr. Leggat in St. Louis.

Mr. NOLAN.—This paper, if the Court please, is as follows:

Mr. MAURY.—We wish to suggest that there is no plea of another action pending, your Honor. This could not be relevant for that purpose, because there is no plea; and in allowing the evidence to go in we are not admitting there is any such plea or that it is relevant for that kind of a purpose.

The COURT.—I understand.

Mr. NOLAN.—It is offered, your Honor, because it shows another and a different declaration of rights and duties existing between the plaintiff and the defendant. (Reads paper.) I now offer the petition in evidence.

[205—147] The COURT.—Admitted.

(Paper marked Defendant's Exhibit 1).

The WITNESS.—I received five hundred dollars from Mr. McLure on or about August 10th, 1912. I think it was the 9th of August; I asked him if he

(Testimony of Rod D. Leggat.)

would give me a check for five hundred dollars; I was going east to see my sister, who was confined in New York. At that time when I received the check from Mr. McLure, Mr. McLure owed me some money. There was five hundred shares of the Combination that I sent to him to have them placed to my credit, and never was done; cost me \$250. That was about ten years ago. And then there was taxes that I paid, \$70, old taxes, in Silver Bow County, for Mr. McLure. I paid them to Colin Campbell—I had him go over the records; he used to be the abstractor for the Anaconda Company. That was *then* or twelve twelve years ago, and then five or six years ago, I was in St. Louis, and he asked me to get a man to send up the porphyry dyke. It is over near Rimini, on a great deal of property over there; he wanted this man to go up, take a wagon and stay—and he gave me the plats of it at St. Louis, and I brought them up here, large plats, plats of the ground, and that man stayed over there, well, I guess a month, looking all the properties over, and I paid him \$130.00, and sent the bill to Mr. McLure—never got it. That was about eight years ago; and I let his wife have fifty dollars, at the Finlen Hotel. That was the first time after she come from St. Louis, when she was coming back. I don't remember the exact date of that. I can't remember approximately the year. She was a lady and she wanted some money and I gave it to her. That was about four or five years ago, at the Finlen Hotel. And since

(Testimony of Rod D. Leggat.)

then I have been paying Mr. McLure's taxes right along on the [206—148] properties here in this county. The first, Mr. Campbell, he figured what he owed, delinquent and everything of that kind, which I paid, you know, and been doing that ever since; I don't know how much that was. I got some in my pocket that I paid the other day. I have been doing that for twenty-five or thirty years; he never paid any taxes at all in Silver Bow County. I cannot tell how much I have paid on Mr. McLure's account in that time. I should think seventy or eighty dollars. When I got this five hundred dollars from Mr. McLure in August, 1912, I did not ask him for a loan; I asked him for a check. I said, "Charlie, I would like to have you give me a check for \$500." He said, "I will do it." He wrote the check right out. Never anything more said. He gave me the check. Nothing was said as to repayment. Just gave me a check. My wife had just died four or five days, and I had gone east. Mr. McLure never asked for the repayment of the five hundred dollar loan. He never mentioned it. He never demanded the repayment of the five hundred dollars August 10th, 1912.

Cross-examination by Mr. MAURY.

The WITNESS.—I first became acquainted with Mr. McLure in 1867 over in Helena. We first became mining partners in 1888. The first claim we worked as mining partners was the Elvina. That is one of the claims mentioned here. We didn't own

(Testimony of Rod D. Leggat.)

it in partnership, I had taken some bonds on it. I first had taken a bond on it. He didn't give any bond on his, but the other parties that owned it. Until I got the deed for it I didn't own any of it. Mr. McLure put up the money for the work in the Elvina. I don't know how much he put up, possibly forty or fifty thousand dollars. We were to be half partners in it. I superintended it. When the monthly bills [207—149] would come due I would draw on Mr. McLure. He was sometimes dilatory but always came through with a check. Sometimes he didn't answer my letters at all, but eventually the checks always got here. I don't know; I couldn't state as to whether it was forty or fifty thousand dollars or eighty-five or ninety; it might have been a little more. I think I paid for the Elvina at the rate of twelve thousand five hundred per quarter; that each quarter cost twelve thousand five hundred. I think that is right. Mr. McLure put up that twelve thousand five hundred. He put up all of that money, fifty thousand dollars. And then after that we sank a shaft 250 feet deep. I think I worked it two or three years. I don't know if the bills were as high as twenty-five hundred dollars a month; yes, they might have been sometimes, some of them, yes. Counting the bonds taken in, I would say that the amount of money put up on the Elvina transaction by Mr. McLure, was close to ninety thousand dollars. That is the cash price. I think we stopped work or decided to quit entirely working the Elvina

(Testimony of Rod D. Leggat.)

about 1893 when silver went down. It is not a fact that Mr. McLure had put up all the money and I had merely superintended it. I put up something myself. I can't tell how much. There was never anything said that we would just call that a half and split the claim; nothing said about me having a half interest and therefore that that wouldn't go through the accounts. Never anything of the kind said. I thought I was the owner of a half interest in the Elvina.

Q. And you thought so on the 17th day of July, 1912; that was the year before the sale; you thought that you were an owner of a half interest in the Elvina, didn't you?

[208—150] A. That is an option that I gave to parties, and put my name in it, and Mr. McLure got it, he held it two days before he signed it.

I wanted to get my deed, you know, and I put it in there. He signed it, too. He signed the option with me, but he kept it, kept the thing two days. This paper that you show me, marked Plaintiff's Exhibit 20, that is an option that Mr. McLure and I went into on the 17th day of July, 1912. We agreed to sell to Ernest Anderson and Andrew Slatindale. We agreed to sell the Elvina for \$100,000. And we gave them a lease on it. I don't know when Mr. McLure signed it; he kept the lease two days before he signed it. This is my signature and that is Mr. McLure's signature. Mine was signed first. At that time the record title of the Elvina stood in

(Testimony of Rod D. Leggat.)

the name of Charles D. McLure. There wasn't a scratch of a pen to show that I owned a half interest in it. But after I signed the lease, he signed it; after I signed it, Mr. McLure signed it. He and I were a week or two agreeing with Slattendale and Anderson on the terms of the lease and what the lessees had to do, and how much work they had to carry on. Mr. McLure and I were consulting together with them during that time. After we quit on the Elvina I never paid Mr. McLure any portion of the ninety thousand dollars, or say forty thousand, whatever it was, that he put up, as the working expenses. I didn't owe it to him; he was to furnish everything for all the expense on that mine. And I was to do the superintending.

Q. Now, at one time all of the Elvina title had stood in your name, hadn't it?

A. Well, I took a bond on some of them, and didn't get his. I took a bond on Mr. Clark's and Mr. Argyle's, but I did not get Mr. McLure's. He promised to give it and then he considered he would join in with me in working the ground. [209—151] He and I worked it as partners for some years. Mr. McLure and I next went into partnership in mining after we decided to shut the Elvina down, over at Sand Creek. That was on the McVey claim and others. I can't think of the names; there were several of them. The Chili was one. I don't know how much money Mr. McLure put up there. I wouldn't say, it was around about forty thousand dollars.

(Testimony of Rod D. Leggat.)

We went 160 feet deep. We did not encounter much water, no water at all to amount to anything. There was a bonus paid. I think it was a thousand dollars. And then we went 160 feet deep. We did not drive any tunnels or any crosscuts. We just sunk on the vein and quit in the sump. We didn't drift either way; never drifted a foot. I don't know how long we were sinking that 160 feet. I don't know how much of the money I put up there; I had the whole country taken up with options; taken up a whole lot of it. And I used to pay things myself. I haven't an estimate of how much I paid; it has passed away; I really have forgotten. That venture proved unsuccessful. Mr. McLure and I never had any accounting between us. There had been no accounting between us up to August 10th, 1912. I don't know how long I have been paying his taxes. Colin Campbell told me that there was lots of redemptions or something on the property—had been sold; he figured it out and I paid that. Seventy dollars. But ever since then I have been paying them myself; got deeds right here, some of them, this year. When I paid that \$70 I was a co-owner with Mr. McLure in the Eastern. I was not a co-owner in the Elvina, I didn't have the title to it. I don't know whether I was entitled to have the title to it; I didn't have it. I think one-half of it rightfully belonged to me. I don't know whether it rightfully belonged to me up until the time I bought at sheriff's sale; I would have to go to law to get it. Mr. Mc-

(Testimony of Rod D. Leggat.)

Lure had not promised [210—152] it to me. Yes, he promised it, and he never gave a deed for it. He had promised it to me, though.

Q. Did you honestly believe you owned one-half interest in that on the day of the sale?

A. Well, I don't know. On the day of the sale I bid it in to protect myself on the Elvina claim. Of course I was afraid my one-half interest would get into the hands of somebody else. I don't know anything about Jim Murray. I did not see James A. Murray just before the sale, not that I remember. I don't know if I saw him any time shortly—within two or three days before the same. I might have done so. There were five hundred shares of this Combination stock. I gave that or sent that to Mr. McLure ten years ago, I think. I wanted him to place it to my credit; make out—for me; I have got 250 shares now, and I wanted some more of it and I bought it. I don't know what became of that 500 shares that I sent to Mr. McLure. It is selling for fifty cents. That is what I paid for it. I paid fifty cents a share for it. I cannot give you an approximate date of when I sent that to Mr. McLure. I think his secretary could tell, the secretary of the company. He took it and put it in his own name. I never wrote Mr. McLure a letter about that. I don't think he ever sold that; he was buying the property. I don't think he sold it; he took it in his own name; that is what he done. I loaned Mrs. McLure, or handed her as an accommodation one day, fifty dollars. I think it was the first time that she

(Testimony of Rod D. Leggat.)

went to St. Louis after she come here first, you know; I don't know. I don't know how long ago that was, three or four—four years ago; I think it was about four years ago. She knows it. Mrs. McLure was all right then. Of course I also knew that whatever money might go to Mrs. McLure, why Mr. McLure would [211—153] always say, that was all right, he was responsible for it. I think that he was. That is fifty dollars, the taxes were seventy or eighty dollars. And also the work of Mr. Masters goes to make that five hundred dollars. Mr. Masters that I sent over to the porphyry dyke to look after Mr. McLure's mines, water right. That was about six or eight years ago. I think I paid him \$120.00. That man is alive, he is down in Idaho. Mr. McLure and I never went mining over to the Cardwell district together; never a dollar; absolutely he never had put in there, and didn't own anything there. He brought that in his suit in St. Louis; he never owned a dollar; never was interested in the camp. He never put up any money on that. And I never wrote him any letters about that. I have not read the various letters of mine that have been on file here, since last June, when this trial commenced. I have not glanced over them or looked through them in any way. Mr. McLure and I were intimate; I think there was a great friendship between us. No, he was not my dearest friend. I don't think it was thirty years that I took care of his property here, since '78, '79, until two years ago. In a measure I

(Testimony of Rod D. Leggat.)

acted as agent to sell the property, but always wired to him, anything of the kind. I gave leases on it, one lease was made. I think you read it there; I don't remember now when it was. I don't think I made one lease when Mr. McLure was not here. I did not lease the entire Eastern claim, a verbal lease. That was first, years ago, I don't remember when it was, John Noyes and me; John Noyes owned in it at that time. I fixed the price that was to be paid by Wolvin & Hayes. Mr. McLure was in St. Louis. I telephoned about it; told him what was done. I telephoned him what I had done, for two hundred thousand dollars. I don't remember whether he was at Phillipsburg or not; but [212—154] he came right on; come right on. I signed the contract agreeing to deliver. Capt. Sanders didn't have anything to do with it. It was Mr. Wolvin and Hayes. The only time I knew Mr. Sanders was when he wanted to pay twenty thousand dollars, and telephoned to my wife, or my house, that he wanted to pay the twenty thousand dollars into the bank and I telephoned to him that I couldn't go, and I never went with Mr. Sanders to the bank; Mr. Sanders come to my house.

Q. Now, on exhibit "A," on the first day of July, 1912, you and Captain Sanders signed up this, didn't you (hands paper to witness).

A. No. Oh, yes, the first; yes. That was preliminary. No, that was on the 10th of July, or the 20th of July—of June. This is when it was paid. When

(Testimony of Rod D. Leggat.)

I signed my name there I was acting for all of the owners of the Eastern Lode claim, and acting as their steward or confidential agent, and fixed the price.

(Recess until two o'clock P. M. same day.)

[Testimony of Thomas Fenlon, for Plaintiff.]

[213—155] THOMAS FENLON, called as a witness on behalf of the plaintiff, having been first duly sworn, testified as follows:

Direct Examination by Mr. MAURY.

The WITNESS.—I was not cashier of the Miners Savings Bank & Trust Company of Butte on July 6th, 1913. I have a page of the book of original entries showing the account of Charles D. McLure with that bank on that date. I am cashier now.

Q. Can you tell us the status of the account of Charles D. McLure on that date?

A. July 6th, 1913?

Q. July 6th, 1913.

Mr. DONOVAN.—We object to this on the ground the paper should be identified as correct.

The COURT.—What date, now, what is this, the date of the sale. It was spoken of heretofore as June 6th.

Mr. MAURY.—That is true.

Mr. DONOVAN.—June 6th is the date of the execution sale.

Q. Have you June 6th? A. Yes, sir.

Q. What was the credit, if any, to the account of Charles D. McLure, subject to check?

(Testimony of Thomas Fenlon.)

Mr. DONOVAN.—We renew the objection upon the ground that the witness has stated he was not an employee of the bank at that time.

The WITNESS.—No, I wasn't cashier then.

Q. What office did you hold?

A. Why, I was teller.

The COURT.—Well, as long as he knows; the objection is overruled.

[214—156] A. (The WITNESS.)—On June 6th the balance was \$1,035.56. Before that May 8th was the last time the change—it was \$1060.50 then. It next changed after June 6th, 1913, on July 8th. That was subject to check. It was open account subject to check of Charles D. McLure.

Cross-examination by Mr. NOLAN.

The WITNESS.—The account was closed in September, 1914. In May and June of 1914, he had a much smaller balance at that time; I didn't bring the sheet for that time; this just goes up to a much earlier date than that.

(Witness excused.)

**[Testimony of Rod D. Leggat, for Defendant
(Recalled).]**

ROD D. LEGGAT, recalled to the stand for further cross-examination.

(By Mr. MAURY.)

The WITNESS.—This letter which you show me which bears date October 24th, 1907, is to Mr. McLure. I recognize my own handwriting. This is my signature.

Mr. MAURY.—The letter has already been intro-

(Testimony of Rod D. Leggat.)

duced, though never read to the Court. It reads (reads letter).

The WITNESS.—This letter, August 24th, 1909, was sent by me to Mr. McLure at St. Louis. It starts out "My dear old true friend" and reads partly "My sympathy is always with the under dog in the fight. Can't held it. It is born in me." That was part of the letter. In this letter you say: "One thing I want distinctly understood. If there is any stock or interest [215—157] transferred to my name, I will on demand from you transfer it at once back to you. So just keep this." That was sent May 25th, 1907, the date the letter bears, or about then. My relations with McLure were exceedingly intimate when you sent those letters. That intimate relation ceased—I don't know—two or three years before March 29th, 1915. We were friendly and everything of the kind, but he had kept things from you, you know; didn't tell me lots of things, pertaining to his own family and his own self, or his own interests. Never told me anything about the porphyry dyke. But down at—well, near Great Falls there. Neihart. I was made president of that and I never knew a thing of it. Asked him to tell me something and he didn't tell me. He made me president of it. That was the Diamond R. I was only what he had made me in the Diamond R. I don't know how much of a stockholder, fifty shares, something of that kind, just to qualify me as president and director. I can't remember the time I was made president of the Dia-

(Testimony of Rod D. Leggat.)

mond R. by Mr. McLure. I went over to Great Falls at my own expense.

(Witness excused.)

Mr. NOLAN.—The defendant rests.

The COURT.—Anything further from the plaintiff.

Mr. MAURY.—The plaintiff rests, your Honor.

[Order Approving, etc., Statement of Evidence.]

[216] CERTIFICATE.

I, George M. Bourquin, Judge of the above-entitled court, do hereby certify that the foregoing statement is true, complete and properly prepared, and the same is hereby approved and ordered filed as a part of the record for the purpose of the appeal herein.

Dated this 6th day of March, 1916.

BOURQUIN,

District Judge.

Filed Mar. 6, 1916. Geo. W. Sproule, Clerk.

**[Certificate of Clerk, U. S. District Court to
Transcript of Record.]**

[217] United States of America,
District of Montana,—ss.

I, Geo. W. Sproule, Clerk of the United States District Court for the District of Montana, do hereby certify and return to the Honorable, The United States Circuit Court of Appeals for the Ninth Circuit, that the foregoing volume of 216 pages, numbered consecutively from 1 to 216, inclusive, is a full,

true and correct transcript of the pleadings, decree and all other records and files in said cause mentioned in the praecipe for transcript herein, as appears from the original records and files of said court in my custody as such clerk; and I do further certify and return that I have annexed to said transcript and included within said paging the original citation issued in said cause.

I further certify that the costs of the transcript of record amount to the sum of Ninety no/100 Dollars (\$90.00), and have been paid by the appellant.

Witness my hand and the seal of said court this 11th day of March, A. D. 1916.

[Seal]

GEO. W. SPROULE,

Clerk.

[Ten Cent Internal Revenue Stamp. Canceled.
3/11/16. G. W. S.]

[Endorsed]: No. 2761. United States Circuit Court of Appeals for the Ninth Circuit. Rod D. Leggat, Appellant, vs. Charles D. McLure, Appellee. Transcript of Record. Upon Appeal from the United States District Court for the District of Montana.

Filed March 15, 1916.

F. D. MONCKTON,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.

*In the United States District Court for the District
of Montana.*

CHARLES D. McLURE,

Plaintiff,

vs.

ROD D. LEGGAT,

Defendant.

Order Extending Time to Docket Case.

Good cause appearing, the defendant and appellant above named is given up to and including the 25th day of March, 1916, within which to file the record on appeal and docket the case with the clerk of the United States Court of Appeals for the Ninth Circuit.

Dated at Great Falls, Montana, this 6th day of March, 1916.

BOURQUIN,

Judge.

[Endorsed]: No. 2761. United States Circuit Court of Appeals for the Ninth Circuit. Order Under Rule 16 Enlarging Time to March 25, 1916, to File Record Thereof and to Docket Case. Filed Mar. 9, 1916. F. D. Monckton, Clerk. Refiled Mar. 15, 1916. F. D. Monckton, Clerk.

